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THE MODERN PRISON CURRICULUM

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THE MODERN PRISON CURRICULUM

A GENERAL REVIEW OF OUR PENAL SYSTEM

BY

R. F. QUINTON, M.D.

LATE GOVERNOR AND MEDICAL OFFICER OF H.M. PRISON, HOLLOWAY

MACMILLAN AND CO., LIMITED
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PREFACE

THE course of training and treatment carried out in His Majesty's Prisons is constantly undergoing some variation. New theories, partly speculative, partly founded on experience of working, lead to the enactment of new laws and regulations: changes in the administration give the usual opportunities to new brooms; and in course of time much that is old and bad and cruel gets swept out of sight, and almost out of mind. As one who has witnessed the passing of many of the penal relics of a bygone age, such as dark cells, cranks, treadwheels, and the rest, I venture to discuss some questions connected with the penal systems of our own and other countries in the light of the most recent pronouncements of modern penologists, and of such experience as my acquaintance with our own penal system has afforded me. I have no startling theories

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to propound, nor do I claim any oracular infallibility on a subject on which the very widest differences of opinion are still consistent with a genuine desire to promote progress; but so many of those who write on the subject are pure theorists, that the views of one who has been in close touch with it in practice may be deserving of some consideration. My particular point of view, under the conscious or unconscious influence of a familiarity with the material to be dealt with, and with the machinery of administration, may be deemed utilitarian in so far as it recognises the interests of society as a legitimate factor for consideration in the settlement of penal policy; but it does not by any means ignore the rights or interests of the criminal. These interests will be found in most instances to correspond in the long run much more closely with the interests of the community than most people imagine; but if, and when, they are in conflict, the individual has a fair claim to special consideration, and he is not at all likely to suffer wrong under the present beneficent spirit in which the laws of England are administered. Give him a fair trial and acquit him, or put him on probation, if you may: but punish him if you ought,

reform him if you can, and restrain him if you must. These would appear to be the rational indications for dealing with delinquents of every degree of turpitude or criminality; but they are not entirely acceptable to reformers who aim at universal regeneration and yet fight shy of the obligation to punish. Administrators who are called on to reform criminals very naturally ask for time and greater powers of detention to enable them to deal on reformatory lines with large classes of prisoners, such as inebriates, vagrants, and recidivist convicts. The restrictions on freedom, however, which are involved in this demand, are much resented by a liberty-loving people, with the result that a very large and important proportion of the criminal class enjoys a certain immunity from interference which acts as a kind of incentive to criminality, and at the same time jeopardises their chances of reformation. Inebriate reformatories, labour colonies, and preventive detention establishments are the recognised remedies, but the patients do not get their medicine regularly. The reformatories are not used freely, the labour colonies exist on paper only, and preventive detention, which appears to be under a cloud

of official suspicion in some quarters, has been already considerably restricted in its operation. Reluctance to punish and reluctance to detain are signs of the times which no one can fail to observe. Laudable in themselves, so far as they denote a general softening of manners and a reaction against the excesses of a repressive age, they can hardly be used too freely in favour of accidental or occasional offenders; but they are not helpful in rehabilitating the more persistent variety of criminal whose prospects of reformation under our existing regime are vitiated by his claims for freedom. To escape from this dilemma America has evolved the so-called "indeterminate sentence," which makes the time of release dependent on the prisoner's fitness for the duties and obligations of citizenship. Rival penologists in that country, who have an opportunity of observing the actual working of the indeterminate sentence in its application to the graver forms of crime, dispute its efficacy on the ground that the sentences are in practice too short. In England it is positively rejected lest in practice they should prove too long. To find a way out of this difficulty, so as to place a real check on

practising habituals, is one of the insistent problems in criminology.

The very rapid fall in crime which took place in the last quarter of the nineteenth century, though it still continues and makes a satisfactory showing when compared with the general population of the country, has nevertheless sustained a check in the first decade of the twentieth century which is already causing some anxiety to the authorities. There is good reason to think that reluctance to punish and restrain habituals has a causal relationship to this recrudescence of crime, and that a more vigorous policy in dealing with this class of offender would diminish the attractions of a criminal career. Dislike it as we may, there is no getting away from the conclusion that serious crime both merits and demands some more serious form of punishment than a few months of present-day prison treatment. It is in no spirit of vindictiveness towards persistent criminals, but rather with a view to the efficacy of punishment, if punishment is resorted to at all, and, further, to prevent the birth and growth of a hopeless class, that one who has observed their moral failings and their misdirected

efficiencies advocates more control for them and more discouragement for their imitators.

In Chapter VI., which deals with the proceedings of the recent Prison Congress, I have alluded to the various substitutes for imprisonment which have been suggested and tried in different countries for offences of a less serious character. Of these the "suspended sentence," coupled with a system of strict probationary supervision, appears to offer the best promise of success, by keeping novices in, or aspirants to crime out of prison. It could be fitted into our system with advantage.

For the benefit of those who wish to know the extent and the nature of *proved* crime in England and Wales, with its fluctuations in recent years, I have placed in the Appendix some tables showing the daily average population of the prisons at different periods; also an analysis of the offences committed with the numbers in each class; and a summary of the sentences passed on those who were committed in 1910—all taken from the official returns; also a copy of the draft rules for Preventive Detention, with an accompanying memorandum of instructions issued by the Secretary of State for the Home Department. Taken as a whole,

the figures indicate a fairly law-abiding population, and a steady progress in the fall of crime. State control of the criminal population under a uniform system of management has undoubtedly proved a success; and it is only those who lack a sense of proportion in matters of this kind who can question the practical results. In 1880 there were thirteen *convict* prisons in full work at Millbank, Pentonville, Borstal, Brixton, Chatham, Dartmoor, Parkhurst, Portland, Portsmouth, Woking, Wormwood Scrubs, and (for females) Woking, and Fulham—the average population of the whole being 10,000. At present, five prisons suffice for the convict population, viz.: Dartmoor, Maidstone, Parkhurst, Portland, and (for females) Aylesbury—the average population being 3189. Further, the local prisons then contained 20,000 inmates as compared with 18,500 at present. At the risk of repeating myself I lay some stress on these facts for the benefit of pessimists who think that their own generation excels in wickedness. As a matter of fact, if criminal statistics are any test of the moral condition of a country, England at the present time ranks high: but there is still much to be accomplished in the field of crime,

so that we must not adopt an attitude of complacency any more than we need resort to one of despair.

As the latest legislative enactment for dealing with habituality, both in its early and late stages, may have some interest for students of crime and its treatment, I include in the Appendix Parts I. and II. of the Prevention of Crime Act, 1908, which deal with Borstal Institutions and Preventive Detention respectively.

R. F. Q.

November 1911.

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CHAPTER I

ON PUNISHMENT

Correction of criminals in times past—Spread of crime—Penal codes relaxed—Ideals of punishment changed—New machinery based on self-help—Penalties that will not punish—Crime in France—Severe penal codes—Humane code firmly administered the best—Summary Jurisdiction Act, 1879—Uniform prison system—History suggests a medium in treatment—Recent recrudescence in crime and its causes—Sentimentalism—Irresponsibles—Altered public feeling in regard to crime and punishment—Principles of punishment not new—The right to punish—Features of the British temperament—Their bearing on penal treatment—Unequal sentences—Speedy justice.

THERE is nothing in the world's history which serves to illustrate so forcibly the tardy progress of mankind from barbarism to civilisation as the methods chosen at different periods for the punishment and correction of criminals. For what we should now regard as venial offences, or, at most, crimes of lesser magnitude, men have been in past times put to death in myriads — hanged, drawn, quartered, boiled alive, burnt at the stake, torn asunder, and cut in pieces—with every conceivable circumstance

of cruelty and ignominy. Death in their case put an end to suffering; but tortures still more diabolical, and to us inconceivable, leading to permanent physical incapacity and life-long misery, were inflicted on thousands of others who were merely suspected, and very often innocent, persons. The nations of Europe seemed to vie with one another in their ingenuity in penal invention; and neither the spread of Christianity nor the progress of knowledge exercised any sensible influence on the administration of criminal law. Vengeance and intimidation were the only instruments known to men who were otherwise enlightened for the repression of crime. War on the criminal accordingly, never-ending and unrelenting, was the inevitable result. Destitute of money and property he had to pay heavy toll with his person. To exterminate him at once, to take vengeance on his person by disabling him, to send him into exile, or to some oubliette where he might perish by torture or starvation,—these were the conventional resources of European civilisation up to the nineteenth century. Mere incarceration was not regarded in the light of punishment at all; and death was the only penalty which was held

to be of any account for stamping out criminality, and the only satisfactory expedient for solving crime problems. Men seemed to have neither the wit nor the inclination to attempt any schemes for the prevention of crime, or for the reclamation of the criminal. Meantime the disastrous effects, both moral and economic, of this carnival of vengeance were manifesting themselves in no uncertain fashion in Great Britain. Crime spread through the country with alarming rapidity, the cost became an intolerable burden on the State, and every year was adding to the numbers of our criminal population, to whom at last our colonies, then struggling towards settlement and prosperity, absolutely refused to continue giving shelter. The principles which Howard had preached in vain more than fifty years previously were now, by force of circumstances, gradually adopted by the legislature, the rigours of the penal code were relaxed, and the whole theory and ethics of punishment at length came in for a belated share of public attention. The abolition of the death penalty for all but a few offences at once gave a new direction to criminal therapeutics; and reformers bent their energies to the more profitable tasks of preventing crime and

reforming the criminal. Punishment, which had hitherto been conducted on retributive lines when men settled their own differences, or on repressive lines when the State attempted to stamp out crime by severity, now entered on a reformative and preventive stage, and came to be recognised as a regulated form of retribution vicariously applied to offenders by society on behalf of aggrieved or injured persons. The necessity for making this retribution conform to the dictates of mercy as well as of justice was soon evolved from the new conditions. To exact the uttermost farthing is in most cases impossible, and in all cases impolitic. Crimes may be identical, but criminals differ so widely that no system can be depended on for adjusting their relations with accuracy. The ideal punishment accordingly which is aimed at by all modern criminologists is that which is likely to attain its object by the least, instead of the greatest, amount of suffering on the part of the victim. With a view to the carrying out of this important object the authorities adopted the policy of meeting successive improvements in the statistics of crime by generous concessions in the form of reduced sentences and improved prison treatment.

They introduced also a species of regulating machinery which at once placed in the hands of the prisoners themselves a means for ameliorating their own condition. In order to assimilate, as far as possible, the degree of suffering involved in the sentences ordered by the courts to the merits or demerits of individual prisoners, as evinced by their conduct in prison, they devised a system of progressive stages through which each prisoner had to pass, earning his steps and additional privileges by good conduct and industry; and further, they allowed him to earn a considerable remission of sentence in the same way. The general effect of these changes was to place each prisoner's fate to a large extent in his own hands, and at the same time to supply him with the needful incentive to reformation of character, so that the existing laws contained in the criminal code, and the general conditions of prison treatment, which is constantly undergoing change in the prisoner's favour, are practically what the criminal has made them. Crime in this country, as we shall see, has been reduced already to manageable proportions; the dwindling class of habituals who engage in *serious* crime appears to be enclosed in a ring fence,

and the general outlook is encouraging; but the slight recrudescence which has recently manifested itself should act as a warning to us not to distribute rewards or privileges prematurely, when the general indications of the trend of crime do not appear to justify them.

Many of the social reformers who are interesting themselves in the study of crime and its punishment at the present time seem to be in search of a penalty that will not punish. To some of them the idea of punishment, which they regard as revenge pure and simple, is totally abhorrent, while our methods of carrying it out under the existing penal system are anathema. If such a specific as these reformers are seeking should ever be discovered, it is highly improbable that this would bring us any nearer to a solution of criminal problems, for it is certain that crime cannot be suppressed by cruelty, and equally certain that it cannot be killed by kindness. The teachings of history on this subject are irrefutable and quite plain to read. In the eighteenth century, when the criminal code was so severe that more than two hundred offences were punishable by death, and executions were almost daily occurrences, crime flourished amazingly. At a later period

in the nineteenth century, when long penal sentences under a very stern code of discipline were inflicted for comparatively trivial offences, convicts were more than three times as numerous as they are in 1911. On the other hand, instances abound in which undue leniency has led infallibly to a recrudescence of crime. In this country every relaxation of the laws and regulations relating to vagrancy has resulted in an apparently automatic development of vagrancy offences; while every turn of the screw in an opposite direction has been followed by a corresponding decline in their number. There are, indeed, strong reasons for thinking that perpetual interference with the screw by administrative authorities with widely-differing views, and divergent ideals of treatment, has stimulated the growth of vagrancy.

In France, where the growth of crime has recently attained almost unmanageable proportions, a similar phenomenon on a much larger scale can be observed. Organised bands of armed Apaches parade the streets of Paris nightly, robbing and killing their victims, and snapping their fingers at the police, so that peaceable citizens dare not venture abroad in the streets after midnight without their revolvers,

and hip-pockets have become a sign of the times which by no means denotes public safety. Several policemen have already lost their lives in encounters with these murderous young hooligans, while the public go in fear of their lives. The causes universally assigned for this reign of terror are—a spirit of excessive clemency in the laws, a false humanitarianism on the part of a large section of the public, and a pampering attractiveness in the prisons of Paris, which no longer exercise any kind of deterrent influence on these outlaws. So formidable has the situation become that the Chamber of Deputies, which had recently proposed the actual abolition of capital punishment, has been contemplating the use of the lash for these youths; and further, the death penalty, which had practically fallen into disuse from a too generous interpretation of "extenuating circumstances," has been revived in conditions of panic, and the guillotine is consequently once more in frequent request. It goes without saying that in matters of this kind a succession of cold and hot fits is the last thing to tend to the equable administration of justice, and that an excess of kindness or sentimentality, call it what you will, is tolerably certain

to end eventually in some ill-considered severity of treatment for convicted persons.

But a very severe penal code which is laxly administered is probably the worst kind of instrument that can be employed for repressing criminality. We know, for example, that when our own code was harsh to the verge of barbarity, and when death sentences were passed with a lavish hand on all kinds of petty offenders, with pardons following in profusion, crime attained dimensions that had never been reached before. It would appear, therefore, that a humane penal code which is administered firmly and equitably, with a view to the certainty rather than the severity of penalties, offers the best prospective means of repressing crime. Under such a code leniency can be extended with safety and advantage to first offenders and occasional delinquents, for whose faults there may be palliations which are quite out of court and inadmissible for persons in whose careers crime is a habit rather than an incident. For the latter class of offenders experience shows that the clemency which has been accorded to them for the past thirty years has apparently tended to aggravate their failings ; short sentences, followed by frequent

intervals of freedom, have tempted them to commit a greater number of crimes, and have developed in them the crime habit which it is the aim of every sound penal system to eradicate. In their own interests, therefore, it is desirable to withhold from them a clemency which they have turned to such poor account, and to subject them to some restraining influence which will keep them out of mischief without reverting to the long *penal* sentence. Here again the lessons of history are emphatic and instructive. The Summary Jurisdiction Act of 1879 practically abolished minimum sentences, and granted a much wider discretion to the courts in dealing with various offenders. It put an end at once to the long, severe, and ineffective sentences of penal servitude which had been adopted previously as substitutes for the costly system of transportation; and the whole tone of the Act proclaimed a new spirit of clemency and humanity. The simultaneous establishment of a uniform prison system under State control, and on similar humane lines, gave a powerful fillip to a more equable administration of the new law. These two measures taken together, combining, as they did, mitigation of punishment with uniformity

of method in carrying it out, effected an immediate and continuous reduction in crime which has never been equalled before in our criminal records. But most Acts of Parliament produce unexpected results, and the Act of 1879 proved to be no exception to this rule. It was found that the actual numbers of practising criminals declined in a surprising manner, but recidivism increased. The beneficent intentions of the Act, which affected criminals in general so favourably, served merely to stimulate the activities of the more confirmed habituals, and the era of leniency inaugurated by the Act appeared to demoralise them.

If, then, we put aside sentiment for the moment, and consider the question of the treatment of habituals on business lines, following the indications which history affords us, it is evident that a medium course, which avoids severity on the one side and leniency on the other, is best adapted for them; and that a revival of the long penal sentence would be an error in policy only less objectionable than a continuance of misplaced leniency. The recent enactment of preventive detention is the natural and logical outcome of this succession of events, the significance of which could

not fail to impress itself on the prison administration, whose never-varying objective is to checkmate the habitual criminal.

A remarkable series of sensational crimes and incidents connected therewith—the Crippen case, Houndsditch murders, Stepney siege, and Clapham murder—has recently kept public attention fixed on crime and its punishment. Closely following on this series, the publication of the annual criminal statistics for 1909 connotes a recrudescence of the more serious form of crime, as shown in the increased numbers of persons tried for indictable offences. Mr. H. B. Simpson of the Home Office, who has had long experience, and has made a close study of criminal questions, has contributed a valuable introduction to the statistics, in which he shows that the figures point to a steady increase of criminality during the last ten years which is more marked than at any previous period for which similar statistics are available. For the five years 1894-98 the annual average number of persons tried for indictable offences was 52,208; for 1899-1903 it was 55,018; for 1904-8 it was 62,000; and for 1909 it was 67,149.

These figures indicate undoubtedly some

increase in indictable offences; but they are affected to some extent by procedure, so that they may possibly mean a temporary rather than a permanent trend upwards. We must hope that it is so. An encouraging feature is that the numbers of the criminal classes do not show a corresponding development, and that crime in proportion to population is still insignificant when compared with the records of twenty or thirty years ago. For every 100,000 of the population the annual average number of persons tried for indictable crimes was during 1879-83, 230 (omitting decimals); during 1884-88, 208; during 1889-93, 194; during 1894-98, 169; during 1898-1903, 168; during 1904-8, 179; while in 1909 it was 187.

Mr. Simpson thinks that the increase of crime which the statistics denote "is due not so much to an increase in the number of habitual criminals, but to criminality having become somewhat more prevalent than it formerly was in the community generally." An additional explanation may perhaps be found in the increased opportunities for evil-doing offered to the habitual by dealing too leniently with him, and by shortening his sentence from motives of mercy. Many who read the records

of the criminal courts have discerned a general tendency in this direction for some time past; and their impressions receive some confirmation from the fact that the average sentence of men sent to penal servitude has fallen during the period in which crime has been increasing. In 1900 the average length of sentence on male convicts was 4.92 years; in 1905, 4.63 years; and in 1910, 4.11 years. In 1899 the average had been 5.02 years, so that the decrease seems to have been both steady and regular. Meanwhile all expert authorities who have been in contact with persistent habituals, not merely prison officials, but the representatives of aid societies, and other philanthropic agencies, have been advocating longer periods of detention for this particular class. Crime may thrive abundantly under a regime of severity; but it may also attain considerable proportions under a regime of leniency even when based on the noblest of intentions. If these inferences be correct, it would seem to follow that it is not our criminal code itself (which has served our purposes so admirably till 1900), but rather our method of administering it, that needs some modification; and that, if we are to achieve better results in regulating

crime, we must import a little more firmness and stability into the administration of our criminal laws.

Mr. Simpson suggests "that the steady increase of crime during the last ten years is largely due to a general relaxation in public sentiment with regard to it. There is at all events ground for fearing that reprobation of crime, and resentment against the criminal, are at present factors of diminishing strength in the primary function of civilisation—the safeguarding of persons and property, and the enforcement of the law." He notes also the general spread of sentimentalism and of compassion for the criminal amongst the public. No candid person who takes any interest in these questions can doubt the accuracy of his statements. The signs of the times clearly indicate that sentiment is beginning to exert a detrimental influence on the administration of justice, affecting, as it does, not only accused persons, but also those who have to try them. In the present state of the law, since minimum sentences have been done away with, very wide powers of discretion have been conferred unavoidably on several indiscreet persons who are called on to administer justice—persons

who take no account of general opinion based on experience, but act on their own personal views as to the efficacy or futility of punishment. One set accordingly thinks it right to punish and deter, while another is doing its best to forgive and forget. The activities of the former are kept in check by the statutory maximum penalties, and by the fear of being harried and pilloried in a not over-scrupulous press for any excess of zeal, or of coming under the rebuke of a vigilant Home Secretary. The latter, however, are under no similar restraint, an occasional jibe at their humanitarianism being much easier to bear than a charge of barbarity. They are consequently in full possession of the field at present, so that many philanthropic idealists dispense benevolent theories rather than impartial justice. The prevalence of sentimentalism accordingly exerts an unsteadying influence on adjudication, and leads to anomalies and inequalities of sentences which suggest a certain amount of judicial demoralisation on the part of those who pronounce them. Another important factor in the administration of justice, which acts as a powerful restraint on judges, is the procedure of the Court of Criminal

Appeal recently established. The free exercise of its rights to reduce sentences, which has been much in evidence of late years, acts as a direct incentive to judges to lower sentences to a point to which the Court of Appeal cannot reasonably or possibly take exception. The general effect of these influences, however, on the various tribunals which deal with criminal cases is to make them err on the side of leniency, so that there is some ground for thinking that the recent increase of indictable offences may be due, to some extent, to the insufficiency of the punishment awarded to those who commit them.

But what is the effect of the spread of sentimentalism on the accused person? He promptly avails himself of all the charitable and benevolent theories that are in vogue to account for his existence,—that his crime is all due to the criminal proclivities of an aunt Polly, who, in her youth, stole a canary; that he is a product of some very mysterious set of conditions probably unknown to himself; that he has been all along a mere plaything of fortune; that he never had a chance; and that he is at present without a shred of personal responsibility for his unhappy position. Naturally he regards

himself as a psychological curiosity of deep interest to criminologists, and an unfortunate victim — misunderstood. The Court, which awards a sentence of a few months' imprisonment to an habitual criminal who so intelligently assimilates these doctrines, really stultifies itself. That there are in the criminal class many persons who are really as helpless in face of temptation as the irresponsibles described above no one who has any experience of prisoners will deny. It is a reproach to our penal system that such persons should be found in our prisons at the present day. They are mental and moral derelicts whom a criminal class supplies in relatively large numbers; they have been hustled into prison in the absence of some more suitable refuge for persons of their very limited responsibility, and they are totally unfit for any kind of penal discipline. They form, however, but a small percentage of the whole number, and, when they have been eliminated, the general body of habitual criminals who live by their wits must be held to be accountable persons. To assume that all criminals are *ipso facto* irresponsible, and poor weak mortals, is an easy way to account for their existence; but the theory is not borne

out by facts, or by the experience of those who have to deal with them. Police, magistrates, judges, and juries have ample opportunities for observing them before sentence; and, when they reach prison, any eccentricity of conduct on their part forthwith brings them under the special attention of medical officers, who have to decide as to their mental state before they can be subjected to the slightest prison punishment. Safeguards of this kind, devised in the interests of prisoners, have the effect of separating them into two groups, namely, those who are responsible for their conduct, and those who are not. The latter group, which is variously estimated at from three to five per cent of the whole number, is of low intellectual type. The former, on the contrary, is possessed of intelligence probably far in advance of that of their own social class. Those who live by crime are no longer untutored savages: very few illiterates are found among them, and many have had good education and training. However perverted their moral views may be, their general intelligence is obvious to all those who come in contact with them. The special form of sentimentalism which affects an inordinate compassion for, or sympathy with, criminals of

this class tends to undermine that sense of individual responsibility which forms the basis of all moral conduct, and to counteract that special line of treatment on which moralists ultimately rely for the reclamation of the offender.

The foregoing considerations would seem to indicate that sentiment, which was formerly too long absent from the domain of criminal jurisprudence at a time when it was sorely needed, has now established itself on a more substantial and stable footing; that a tendency to greater indulgence for acts of crime, and for criminals themselves, is a feature of the present day; and that the old-fashioned ideas of retribution, which is in principle a perfectly just and wholesome check on evil-doing, are for the time being out of favour. Whether the results of this altered state of public feeling will prove satisfactory in suppressing crime depends largely on the extent to which prisoners will respond to mitigations of treatment. Severity has been tried in vain by our forefathers literally "with a vengeance," and on a scale which we can never hope or wish to imitate. The hasty or ill-considered vindictiveness which over-punishes a criminal may drive him into further excesses

with just as much certainty as the maudlin clemency which encourages him to continue a vicious career. Up to the present time moderate penalties evenly awarded have proved the most efficacious means for enforcing the criminal code; and, although the statistical evidences of an increase of crime are for the moment disquieting, there is no ground for a pessimistic outlook, since powerful preventive agencies are coming into use which will probably have far-reaching effects on the numbers and character of the criminal class.

To those who take an interest in the history of crime and its treatment in different ages and countries, the mystery of mysteries connected with the subject is that the true principles of punishment, which are now embodied in all modern penal systems, were perfectly well known over two thousand years ago; and that the unspeakable horrors and barbarities which characterised the criminal laws of all countries alike up till the eighteenth century were not only absolutely unnecessary, but totally futile, for the purpose of suppressing crime. Socrates in his day knew and taught the principles of punishment. Plato also defined them, and even devised a system of prison treatment,

suitable for different classes of prisoners, which might serve as a good working model for many countries at the present day. Even at a time when the most barbarous punishments recorded in history were being inflicted by Nero on thousands of Christians in Rome, the philosopher Seneca, who actually had Nero for his pupil, was engaged in pointing out the proper objects to be aimed at by those who had to administer the criminal laws: "Punishment is designed to protect society by removing the offender, to reform its subjects, and to render others more obedient." But these very wise and sound tenets of the philosophers seem to have been addressed to limited and unappreciative audiences, and to have proved ineffectual antidotes to the cruel theories of repression which filled men's minds then, and for many long centuries afterwards, until Howard, at the end of a life devoted to the alleviation of human misery, at last succeeded in resuscitating them. Up to his time criminals were in truth regarded as the implacable enemies of society to whom no mercy was to be shown, and no quarter to be given. Hecatombs of victims to this pitiless idea were ruthlessly sacrificed with every imaginable refinement of torture; and

the annals of crime bear eloquent testimony to the futility of the theory that repression by means of the sternest penalties is the only way to reduce crime. Whether these delusions were due to the primitive instincts of revenge driving men to a blind retaliation, or to efforts on their part to adjust penalties to a distorted view of the wrongs done to Society, it is one of the strangest things recorded in history that on this particular subject the most barbarous ideas prevailed long after distinct signs of refinement and advancement in art, literature, science, and other branches of knowledge, had manifested themselves with the onward march of civilisation. But we have travelled far since then. Not only has a spirit of humanity entered into our criminal law and our methods of administering it with untold benefit to the community, but the vanguard of the reformers is now almost as far ahead of the main body, which still relies on the teachings of the philosophers, as the main body itself is ahead of the exponents of the old repressive system.

Has Society any right to punish at all? This is the form in which the latest theory of the advanced thinkers is presented to us. The

late Count Tolstoy (who had a long train of worshippers), in his efforts to regenerate society, had no doubt or difficulty in replying to this question in the negative. After giving a lurid description of the inconceivably depraved condition of Russian society, and of the deplorable conditions of life in Russian prisons, which reads to us like notes from the dark ages, he preaches a doctrine which would inevitably lead us back to that period when ordeals by fire, water, battle, and other similar criteria were in high favour. Surely this is pernicious and unpractical teaching. Every community has an inherent right to make laws and regulations with a view to secure as far as possible the greatest happiness of the greatest number. Such laws, if they have no penalties attached to them for disobedience, are mere waste paper, and of no effect for maintaining social order. In the absence of all law every man would settle his dispute with his neighbour according to his own idea of justice, and flog, maim, or kill him by avenging himself on his person, or plunder him by attacking his property. Private vengeance would supersede public justice; and, instead of a reign of universal love and peace, which is the fond aspiration of

Tolstoy and his admiring disciples, universal warfare, uncontrolled and unregulated, would inevitably follow. The settlement of quarrels on the principles prevailing in the playground would probably be a popular form of adjustment. With a nimble wisdom of his own Punch hits off the situation in a recent picture in which a stern-looking judge says, "This case should never have been brought into court": the defendant at once adds, "That's just what I said, my lord, but the blighter would not fight."

So long, then, as mankind continues in his present state of imperfection society is likely to be conducted on a system of rewards for the good, and punishments for the bad, in the interests of all, good and bad alike. But if punishment be necessary for the maintenance of social order, and for the repression of crime, which really means sinning against that order, it is by no means the most important factor which Society has at its disposal for these purposes. Preventive measures are much more efficacious and trusty weapons for fighting crime than any means the wit of man has yet devised for exterminating it. Punishment, however, is a storm-centre, around which

the keenest controversy rages, so that our prisons are denounced by one set as being palaces of ease for vagrants, loafers, and thieves, and by another set as being chambers of torture for men of education and feeling—conclusions which might just as well apply to ordinary music-halls according to the tastes or temperaments of those who visit them. Prisons, as a matter of fact, attract some and repel others; and they are likely to continue to do so as long as an idle class flourishes under our social system, and the conditions of prison life are regulated on the humane principles which alone are possible under an advanced civilisation. If we discard from our consideration for the moment persons of the latter class who either like prison, or do not dislike it sufficiently to keep outside, we shall find that there are two marked features of the British temperament which have to be taken into account in any scheme for the repression of criminality in this country. Good and bad methods of repression by penal means seem to depend to a large extent on the observance or non-observance of them. These two characteristics of the free-born Briton are his innate love of freedom, and his strong sportsmanlike predilection for

fair play, which enables him to accept the risks however badly calculated, and to "play the game" however rash. I remember some years ago, when long sentences were much too common to be fair, a batch of prisoners being sent off one morning for trial at assizes. There were half a dozen of them, and I have not the least doubt that, if I had seen them each separately in the quiet of his cell, every one would have declared his innocence — for the number of "innocents" one meets in prison is astounding. The officer in charge of them, however, told me that they were all in high spirits on the train journey with the prospect of having their cases settled, and that they amused themselves by fixing the sentence each was to get. No pretence of innocence was made by any of them, and all alike seemed quite ready to undergo the sentences on which they had decided in quite sportsmanlike spirit. But they were reckoning without their judge, who was a terror to evil-doers. One of the batch, who had rated his own deserts at five years, which was at that time the lowest term of penal servitude, was acquitted on some flaw in the evidence, to the astonishment of himself

and his companions; but the sentences on the others were all very severe, and much beyond anything they expected—one man who calculated on eighteen months' imprisonment getting no less than ten years' penal servitude. It is likely enough that they minimised their actual deserts, and were prepared for a little more than they had given themselves; but they were a very subdued party on the return journey, and were stunned apparently by the results, being quite unable to comprehend the justice of the proceedings. The incident, however, was significant of a genuine belief on the part of the men themselves that their punishments were not only unfair but vindictive. They said, in fact, they had not had fair play, and that the sentences were cruel.

In my experience at this time similar complaints amongst convicts were almost universal, so that the penalties inflicted had no sanction in the prisoner's own sense of justice, his contempt for the law was intensified, and his conduct in prison regulated accordingly. Every prisoner really expects to pay a penalty for his offence; but if you try him unfairly, or take too large a slice off his birthright of liberty, you bring out at once another of his racial

characteristics, namely, a dogged obstinacy which sets authority at defiance, impels him to resist all reformatory influences, is very bad for his custodians, and infinitely worse for himself. It is not surprising that when these conditions prevailed the conduct of the convict class was characterised by acts of the most reckless violence and gross insubordination. In the breast of every criminal there dwells some sense of justice, and for the time being this seemed to be outraged by the severity of the penal code then in existence. It is somewhat remarkable in this connection that the more unscrupulous the criminal, the more he is inclined to exact in the way of justice, largely tempered with mercy, at the hands of those who mete out his punishment. Professional criminals, whose ethical standards are variable in dimension and elusive in quality, are particularly sensitive on this point: they complain of unjust and unequal treatment much more constantly than occasional offenders —the working basis of their calculations generally being the value of the property which they succeeded, or failed, in securing from the public. Nature has endowed them bountifully with a gambling faculty which inspires their

lives. It is true they play a dishonest game themselves, and when they are caught they make the best of their ill-luck, adapting themselves to prison conditions so as to make things as easy as possible, and accepting in this way the risks of the game; but they know the rules, and their experience of the courts gives a forensic turn to their methods of reasoning, and possibly also to their mode of thought, so that they appear to resent any sign of injustice or inequality of treatment proceeding from the Bench as if they themselves were men of spotless honour. The guerilla warfare which they carry on against society tends to develop in them the craft and cunning of the hunted animal; and they can very often put a plausible and innocent complexion on their offences which would do credit to the ingenuity of an Old Bailey lawyer. Those of them who were expert in this forensic line used to discharge important functions in the prisons by helping their less gifted friends, at a time when education was less common than it is now, in the preparation of their petitions to the Secretary of State for remission of sentence, and in various other unauthorised proceedings such as the writing of "crooked stiffs," or forbidden

communications to other prisoners, or to friends outside. They were commonly known to officials as "prison lawyers."

A sense of outraged justice is not so common amongst female prisoners; but I recall a case in which, by the irony of things, a magistrate of notoriously humanitarian sentiments was unwittingly implicated. A woman was received from court one evening in a state of frenzied indignation, and seemed unappeasable. She kept on saying that she "had done her time," and that the magistrate had given her "three sentences instead of one." A week before she had been charged with being drunk and disorderly—an offence for which she had been in the habit of receiving short sentences not exceeding seven days. On this occasion the magistrate remanded her for seven days in order to get a certificate from the prison medical officer as to her "fitness for being sent to prison." On her return to court with a medical certificate he sentenced her to fourteen days. This seemed to her a gross injustice —hence her wrath. She called him unprintable names with epithets to match, and described him as "a smiling blackguard," in sarcastic allusion to his reputation for leniency

and humanity, while he told her to take the pledge, and that the fourteen-day sentence was meant for her good.

Complaints of *unjust* sentences were very common before 1880; but since then *unequal* sentences have been much more in evidence. Not only do average sentences for the same kind of offence vary in different courts and different districts in the most inexplicable way, but even the same court often shows wide variations of treatment in apparently similar cases. Exact equalisation of sentences is of course impossible under any imaginable code suitable to modern times; but the vagaries of justice are often as perplexing to convicted persons as they are to the spectators. To make the punishment fit the crime is an ideal which is good to aim at, but, for practical purposes, impossible to reach. We have no means at our disposal for measuring the guilt of the offender or the injury he has done. One criminal who has been engaged in fraudulent financial proceedings may inflict injury and suffering on a whole circle of persons, spreading destitution, loss of reason, and death among his victims on a scale that defies calculation. No punishment could be devised adequate to

his deserts on strict lines of justice which would be consistent with the dictates of humanity. Another criminal who commits some paltry offence, which in itself indicates a trifling degree of criminality, may seem at first sight to merit little or no punishment; but the real significance of his offence lies in the fact that it is one of a series pointing to a persistent career of crime for which some penalty disproportionate to the injury done is the only effective and rational treatment. Justice, therefore, would really seem to need the scales and weights with which the artist equips her, if she is to appraise at their proper value all the niceties of the relations between crime and punishment. But another factor which has tended to increase anomalies and inequalities of sentence has been the abolition of minimum sentences for most offences. The effect of this change has been to give full and free scope to adjudicators for practising their various theories of punishment. As this defect in our system is dependent on qualities of head and heart which are a part of our nature, we cannot hope to mend matters until some genius patents a process for imparting a normal point of view to the dispensers of justice, or, in plainer

words, for rendering our seats of justice crank-proof.

The law's delays and procrastinations are other important factors in the production of unequal penalties. Distance alters perspective, so that offences tend to pass out of sight and out of mind simultaneously. Mere lapse of time invariably tells in favour of the accused in proportion to its duration, and, in extreme cases, he is frequently left to the mercy of his own conscience, and to the uncertain pangs of remorse. In this way the slow steps of Justice, which are generally believed to be sure also, lead to many anomalies of adjudication which tend to impair the efficacy of punishment. Speedy justice, when it is attainable, is often best in practice. The man who can administer it, with an appropriate penalty, *on the spot* to a footpad who tries to rob him, or claims his purse, without taking time to refer the claim to the police or to the Charity Organisation Society, accomplishes the ends of justice in a direct and effective manner. If we could only devise a similar and automatic method by which judgment would follow the offence surely, justly, and rapidly, crime problems would, to a large extent, cease to trouble us. Unfortun-

ately this application of the *lex talionis* is limited in scope. In the hands of an individual who knows the facts speedy justice may be effective; but in the hands of a mob swayed by passion it may be dangerous. For the latter, therefore, the ordinary courses of justice, leisurely though they may be, are a safer line of conduct.

CHAPTER II

ON PUNISHMENT—*continued*

Utilitarian need for punishment—The criminal's rights—Racial views of trial and punishment—Separation—Penal methods reflect racial characteristics—No penal specific for crime—Punishment should fit the *criminal*—Persistent criminal seeks idleness and sport—Convicts willing to reform can always get help—Contempt for penal servitude—Preventive detention—How is the rôle of the professional to be made less attractive—Heredity—Environment—Retributive and deterrent principles—The death penalty.

We have already seen that punishment for criminal offences must be regarded as one of the unpleasant necessities of a well-ordered state. Philosophical speculation as to the ethical right to punish would appear to be, in view of this necessity, of little practical import in the complex organisation of modern civilised society. Abundant sanction can be found in the moral law, to satisfy even the highest demands of rectitude, for the exaction of retribution as a preliminary step to repentance and forgiveness; but even if we put aside all ideas of revenge for wrongs, and ruthlessly suppress

this primary instinct of our nature, we shall still find that on the mere utilitarian ground of self-preservation some form of punishment is required for the safety of society. It must not be forgotten, however, that the criminal also has rights of his own which should not be sacrificed to social necessities unless the latter are founded on the principles of justice which have their ultimate source and basis in the moral law. The more closely all social regulations necessary for the restraint of crime conform to this latter standard, the more equitable they are likely to be for the criminal, and the more ready obedience they are likely to obtain from the community.

We have seen that punishment, which is the instrument for enforcing these regulations, if it is to be really effective for its purpose, must not be unduly severe, and it should not be unduly lenient: in the nature of things it cannot be uniformly even or equal in its incidence; but it should find some echo in the conscience of the criminal, and it should accord, to some extent at all events, with his racial characteristics and temperament. To subject him to unusual methods of legal procedure, or to unusual forms of punishment, which are

alien to his inborn sense of fair play, or to his ingrained habits of freedom, would be a foolish and cruel kind of treatment. The ideas of a British subject on the question of a fair trial and fair punishment are widely different from those of a Frenchman or a Russian. He expects, for instance, when he enters the lists, to start at all events with the initial advantage of being deemed innocent. Further, he expects his adversary to lay all his cards on the table, while he retains his own unexposed, and plays them at the time, and in the way, he thinks best for his cause. If you subject him to the system of "interrogation" which obtains in France or Russia he looks on it as torture or quæstio, to which it bears a significant resemblance; and if you sentence him to several years of solitary confinement, as is frequently done in some continental countries, he will probably wish himself dead, and, mayhap, express a similar hope for the early removal of the judge and jury who tried him, in order to obviate the occurrence of any similar perversion of justice in future. At the most he looks forward to a very few months of separate confinement which is by no means "solitary," and subsequently to a longer or shorter period of

congenial companionship with persons of kindred spirit who are already in captivity. Whether this gregarious spirit evinced by our prisoners may be due to some development of the instinct of freedom in our race, and is therefore a part of our national inheritance, may be an interesting subject for speculation, but of its existence there can be no reasonable doubt. Prison officials who are acquainted with the ways of habitual criminals believe that the gregarious spirit tends to increase with the growth of the crime habit, and that the worse the criminal the stronger is his desire for association. The factor, at all events, is one that has to be reckoned with in adjudicating on British criminals, since it has so important a bearing on the mental effects of separate confinement. The lengthened periods of solitude which are frequently imposed on subjects of continental states without apparent injury would, in the opinion of all our administrators, produce a crop of insanity in British criminals; and the tendency accordingly in recent times has been to reduce cellular isolation to a minimum. When, in the first instance, a period of nine months' separate confinement was adopted for the preliminary stage of penal servitude in

England, the kindly and humane Quakers of Pennsylvania had for some time been advocating separation, specially for hardened offenders, as a means to repentance, and a reformatory expedient of the highest value. In their zeal for the cause, however, they endeavoured to increase still further the austerity of the treatment by depriving the prisoners of all work and leaving them entirely to their own thoughts. The mental and moral effects of this system proved disastrous, solitude and idleness combined producing worse results than even indiscriminate association. Nine months' separation was accordingly fixed by our legislature as the limit consistent with a due regard to the mental and physical well-being of the convict. Enforced idleness, though emanating from so humane a source, was in reality the most cruel and debasing influence that could be brought to bear on a criminal class; but such were the stern and old-fashioned ways of driving the sinner to repentance.

The various methods adopted by different countries for punishing their criminals differ widely from one another, but all reflect to some extent the national characteristics and ideals, as well as the moral standards, of their

respective peoples. Every country, in fact, chooses those measures for the repression of crime which are adapted to the habits and genius of its population, just as it selects the guillotine, the electrocution chair, or the rope, for carrying out the death penalty. There is no reason to think that the penal system which suits one country would be equally efficacious in another. Universal or cosmopolitan systems of punishment are, therefore, mere visionary ideals; international arrangements for dealing with criminals are practically limited to extradition; and even anarchists, who are the enemies of all nations alike, are at present exempt from any uniform system of international control, so that they can roam about the world, evading the disagreeable restrictions in force in one country by taking refuge in another, where perhaps the conditions may be more favourable for the dissemination of their crazy doctrines. At the present time, unhappily, England is their favourite asylum, though a very poor ground for recruiting; and London swarms with the outcast incendiaries of Europe—an eloquent tribute on the part of these capable experts to the comparative clemency of the laws of England.

It is obvious that crime, as a social evil affecting the world at large, cannot be suppressed by any penal specific. Crime in the abstract is in reality much too variable an entity to be dealt with on hard and fast lines. Regarded as a contravention of the particular laws which happen to be in force in any State for the time being, it is of necessity constantly undergoing, with the progress of civilisation, some change of definition, so that an act which is criminal to-day may have been perfectly legal fifty years ago. Further, the illegal and criminal offences of one country differ so much from those of another, that what seems to be virtue in Utah is looked on as vice in England. The real problem of penology, therefore, is to make the punishment fit *the criminal*, and more especially the particular criminal who devotes his energies to crime as a vocation, and lives on it at the expense of the community. No penal system which does not take account of the criminal record, as well as the habits and character, of an offender of this type is at all likely to meet his particular requirements or deserts. English law forbids the proving of the previous convictions of an accused person until he is convicted of the

actual offence with which he is charged, so that his case may not be prejudiced in the eyes of the jury; but when the guilt of a persistent criminal has been fairly established, his previous career is a factor which cannot be ignored in determining his punishment.

We have already seen that the criminal of this type retains various racial characteristics which have an important bearing on methods of correction and reformation; but he differs individually from his fellow-citizens in the abnormality of his motives and conduct, which are anti-social in character. No motives of morality, and no fear of consequences, outweigh with him the advantages of a life without work, coupled with the numerous sporting chances such a life affords of occasional spells of prosperity. He seems to have the defects of his qualities, among which must be reckoned that perverted form of enterprise which is so liberally catered for in the betting columns of our evening neswspapers in order that a genuine public want may be supplied. The hidden joys of the poacher's life appeal to him much more forcibly than the blessings of respectability, and the possible losses of the game are entirely overshadowed by the glamour

of the probable gains. It is commonly urged in his behalf that he is a fool, and even that the usual pardon attaching to this disqualification should be extended to him, but those who know him cannot accept this view, nor, indeed, is it likely that he himself would agree to it, unless perhaps temporarily for the purposes of his defence. He may prove to be a fool in the event, like the flat-earth philosopher, or the inventor of a system for Monte Carlo; but stupidity is assuredly not one of his weaknesses, and it may be that he appears to under-estimate the risks because he despises the penalties—a theory to which the records of recidivism lend some colour,—and that his views as to the severity of our present methods of punishment may be as far from the normal as are his tenets on the subject of morality.

This supposition derives some support from certain well-authenticated facts and figures in connection with convicts who specially stand for this type of obstinate delinquent. Almost all convicts are past masters in criminality, having gone through their apprenticeship in local prisons before reaching penal servitude. They know the conditions of prison life thoroughly and intimately, and yet they return

time after time as if familiarity bred some contempt for the penal features of the treatment. It is often alleged in their behalf by themselves and their advocates that they meet with insuperable obstacles when they try to retrace their steps or to find work on discharge, and that "abandon hope all ye who enter here" is literally true in its application to the convict prison; but every aid society can testify that this plea is untenable. The discharged convict who is really willing to amend his conduct can always get from an aid society an amount of genuine help which is frequently quite out of the reach of an ordinary person who falls out of employment. So keen are the societies to "place" promising converts that the ex-criminal often gets a pull over the honest man. Let us now glance at the figures. In the last Report of the Prison Commissioners (1910) it is shown that the daily average number of convicts for the year was 3189, of whom 120 were females. Out of 1068 males and 40 females received during the year, only 124 males and 11 females had not been previously convicted. The percentage of men, therefore, who had been previously sentenced to imprisonment or penal servitude

was no less than 88.39. These figures illustrate in a striking manner what a stage army the convict population is at the present time. In the previous chapter I have shown that the average length of the sentences passed on these convicts has diminished considerably in recent years, with the result that they come back more frequently. The evidence that recidivism is increasing amongst the convict class is further exemplified by comparing the figures of 1903 with those of 1910. In 1903 the percentage of male convicts with previous convictions was 78.32, but in 1910 it went up to 88.39. If we can measure the indifference to, or the contempt for, penal servitude on the part of convicts by these statistics, it would seem to have increased ten per cent in the last seven years.

As the bulk of the serious crime of the country is in the hands of this stage army of pertinacious recidivists, the penal methods adopted for dealing with them are of paramount importance. Previous experience teaches us that it would be useless to make the *conditions* of penal servitude more penal with a view to keeping them out of prison; moreover such a step would be unfair to the occasional offenders however small their numbers may be. How,

then, are penalties to be adapted to this particular class of troublesome evil-doers? The Borstal System, which has been devised for beginners in habituality, will in time decimate their ranks; but the indeterminate sentence, which would detain veterans in custody till they proved fit for law-abiding lives, would appear to offer the best solution of the difficulty. The legislature, however, which is very chary of infringing the liberty of the subject, declines to place this weapon unreservedly in the hands of the prison authorities since it has an ugly resemblance to everlasting punishment, and preventive detention for stated periods has been adopted as a substitute—all the penal features of the sentence being abolished for those who are well-conducted, and the general conditions being assimilated as far as possible to those of a labour colony, with such special supervision and discipline as may be necessary for an aggregation of lawless persons. A set of rules for carrying out these principles of preventive detention has been already drawn up by the prison directors and issued by the Home Secretary,[1] with a special memorandum

[1] See Appendix.

attached as to the working of the scheme. This is very likely to exercise a wholesome influence on habituality by deterring those who are inclining to criminal habits, and by reforming those who have already adopted them.

The highest hopes for the rehabilitation of the professional criminal are centred in this novel form of compound sentence. After passing through a preliminary period of expiation, he is to enter on a term of probation under an intermediate kind of treatment which is designed to fit him for freedom. There is in reality nothing new in the principles involved in the treatment, although the methods of applying them have an appearance of novelty. The professional criminal has, in fact, long since driven reformers to their wits' end, or, at all events, to the limits of their resources for effecting his regeneration. A century ago Sir Walter Crofton, who was at the head of the Irish Prison Administration, had already started an intermediate prison at Lusk, which was even without bolts, or bars, or locks, with a view to fitting prisoners for a return to freedom. It is well known that Sir Walter Crofton supplied America with many of the best features of the systems now in force in

her leading penitentiaries. Since the failure of the long penal sentence in England, detention for prolonged periods has not been in favour; but it must be remembered that the conditions now are considerably mitigated, and that the subjects of this experiment in preventive detention will have in their own hands the power of shortening their detention. Habitual criminals, however, have been hitherto so impervious to the teachings of reason and experience, that it would almost appear that the only use to which they can be profitably put is to make them a warning to waverers by subjecting them to a more continuous form of restraint. They are already under heavy obligations to society for their maintenance in and out of prison, as well as for enormous sums spent in bringing them to justice: if they can be made to render this small social service of determent, it will be a trifling reparation to exact (*pace* humanitarians) in view of the valuable prospective advantages offered to them under preventive detention.

One of the most insistent problems for criminologists in the present day is how to make the rôle of the professional criminal less attractive to him. Hitherto he has been

hypnotised by its allurements, and punishment alone is not likely to accomplish the end in view. To counteract his mere sporting proclivities a short course of instruction in mathematics, which would enable him to grasp the theory of profit and loss, or "to calculate the odds," might be sufficient; but if he is to be trained in the ethical principles on which society is conducted, and in the social duties and obligations incumbent on every member of it, time is required to alter his prejudices. Administrators, who are alive to these necessities, are trying to do their part, and it is very essential that theorists should not mar their efforts by excess of zeal for the liberty of the subject, or by airy speculation as to crime in the abstract. The very last kind of teaching which is likely to uplift a criminal struggling to the light is that which impresses him with an idea of his personal irresponsibility for criminal acts, or his incapacity to exercise his own free will. From a long observation of his habits and characteristics I have come to the conclusion that he possesses the qualities of intelligence, skill, and perseverance which would enable him, if he used them aright, to overcome with ease all his reputed social diffi-

culties and disqualifications. Every criminal is selfish, and every criminal lacks self-control, which can be learned only in a school of discipline where the length of the training must necessarily depend on the state of the pupil. Those who are inclined to teach him in the meantime that punishment is purely revenge, or that his ears are misshapen, and that he was foredoomed from his earliest years, or from birth, or even while in embryo, to a life of crime and failure, are not contributing much to his rehabilitation. No one can doubt for a moment that heredity plays a part in the etiology of crime, as it does in the case of insanity, pauperism, alcoholism, and other social evils; but the disrepute which has overtaken the so-called science of criminal anthropology in recent years tends to show that this part has been exaggerated by scientists. There is, at all events, one bright feature of the outlook which may be commended to pessimists: the drawbacks or handicaps of heredity cannot be insurmountable, otherwise the community would be swamped with whole hosts of degenerates and criminals. "Humanity," as the late Sir Wilfrid Lawson said, "seems to have started

badly. Adam appears to have been a hopeless character. Eve was a mean mischief-maker who made a confidant of the Devil. Cain, their eldest son, was a murderer; and even Noah, who was the best of their later descendants, took to drinking."

So late as the year 1830 the convict population of Great Britain, with its population of about 15 millions, was close on 50,000—a magnificent showing when compared with our paltry 3000 at the present day. Again, the original settlers in Australia had a very inordinate proportion of criminals unfairly thrust upon them, and yet their country at the present time compares very favourably with the best in the world in regard to crime. If the *true* family history of our own convict population could be ascertained, I believe it would be found that it is mainly composed of "black sheep" drawn from families that are generally non-criminal in character and conduct. It may fairly be argued from these general considerations that the disadvantages of heredity, so far as an actual criminal tendency is concerned, have been somewhat overrated by those who have studied crime from a biological standpoint. No crime centre

has yet been discovered in the brain, and no evidence is forthcoming that the inheritors of a criminal taint are affected with an incurable malady.

Nor can it be said that sociologists, who tell the criminal that he is a kind of social marionette, or an irresponsible freak automatically developed by the atmosphere in which he lives, are contributing much practical help to his regeneration. Those who, under any circumstances, supply the criminal with a ready pretext for wrong-doing are not performing a useful public service; but when this pretext rests, as it often does, on vague evidence, or nebulous theories, the proceeding becomes pernicious, and may even prove to be an encouragement of crime. Adverse social conditions may certainly be reckoned among the *predisposing* causes of crime; but a large proportion of the most serious crime in this country cannot be traced to any such source. Crime flourishes also in lands where social disadvantages are almost non-existent, and it has its origin in causes much too complex to be explained by this sociological hypothesis. Moreover, adverse social conditions are steadily diminishing year by year. The dis-

advantages attaching to the class from which our criminals are mainly drawn are rapidly disappearing. Poverty, it is true, has not been abolished; but education, and moral training which forms the basis of character, together with school discipline which fosters self-control, have been brought within the reach of even the poorest members of the community. Quite recently, too, free food has been provided for the indigent, and free medical attention for school children is a further concession. In view of these benefits the theories of sociologists in exculpation of criminals lose much of their force. Further, they tend to sap the independence of the criminal, and at the same time to do an injustice to society which is already heavily mulcted in pocket, if not in conscience, by the illegal conduct of the offender. To make society the scapegoat of his sins is a more convenient than rational way out of the difficulty. I remember a friend of mine remonstrating with an Irish labourer for his non-attendance at church, and inducing him to go to a morning service when the sermon happened to be on the subject of the scapegoat. We interviewed the man after service,

when he gave us his views as follows: "It would be mighty convaynient intirely to put your sins on a goat and sind him to the Divil, but it would be bad thraitment for the poor goat."

It must be admitted there was some force in his contention.

In a book recently published by Miss M. E. Loane, called *The Common Growth*, the subject of heredity and environment has been admirably treated. Miss Loane, from her extensive experience as a nurse working amongst the poor, has had very special opportunities of studying the question at close quarters, and she speaks with an eloquence that is obviously born of knowledge and experience :—

Man was born a living soul, and therefore can never be wholly dependent on environment, nor can the same environment ever be the same to any two living souls. Two sons have an affectionate, over-indulgent mother. One son attributes his failure in life to the temptations to selfishness and extravagance which early arose from the yielding weakness of her disposition. The other is convinced that he owes his success to the sunshine of indulgence poured out on his childhood, and the necessity laid on him by his own nature never to take mean advantage of her love. One son of a drunken and dissolute man is

perverted by his father's influence, and as a mere lad learns to ill-treat his mother and sisters, while another even earlier becomes their anxious protector. I know of a drunken, worthless, poverty-stricken cobbler and his wife who had twelve children, every one of whom grew into respectable, hard-working men and women, fulfilling all the duties of life, and providing their parents with the means—they could not give them the inclination — to follow decent courses in their old age. It is indeed "an admirable evasion of man to lay his disposition on the charge of" any one and every one but himself, and his misfortunes to all causes save that of his own behaviour. These children were neglected and as far as possible misled by their parents, but they chose a very ordinary school-mistress as their guide, and kindly, industrious neighbours as their examples. Had they been disposed to listen, there were others about their path who would have gone beyond the instruction of their parents, and introduced them to a life of crime. A few weeks ago a learned lecturer told his hearers that the Thames Embankment is crowded with men "who only need a chance." It sounds a kindly and in some respects a hopeful doctrine, but in reality the Embankment is chiefly haunted by men who have lost the power to use even the best of chances, because chance in this sense implies choice, and they have not the strength of mind to make a prudent choice and stick to it. I have never yet learnt the life-history of wastrels of either sex even from their own lips, without finding that they have had "chances" in profusion. What they have lacked has been wholesome discipline, and strict control might still save many of them from

a life of personal degradation and social injuriousness. Working in the poorest and least desirable homes, one becomes convinced that original, inborn differences in character are often stronger than environment, whether good or bad, and learns to believe in the reality of "given" souls which may have no traceable connection with earthly parents and temporal surroundings.

Just as of three almost invisibly small seeds planted side by side, and exposed to the same influences of soil and water, sun and air, one grows into a noxious weed, one becomes wholesome food, and the third develops into a thing of beauty and remembrance, so the same family, the same courtyard, the same workshop, nourish types of character as far apart as light and darkness.

These opinions, deriving, as they do, an enhanced value from the detached position of the very kindly and capable observer who relates them, serve to shed light on some of the fallacies underlying the code of criminal apologetics which is so generally adopted and taught by social reformers in connection with the ethics of punishment.

In connection with the penal treatment of crime, it may be regarded as axiomatic that all legal punishment should have in it an element of retribution. Humanitarians who pin their faith to milder measures argue that retribution is essentially vicious in principle, since it implies

retaliation, and consequently revenge; but the expression "revenge" in this connection is really more rhetorical than exact. A vindictive spirit is at the present time totally alien to the administration of our criminal law. Society, which acts as arbitrator in determining the penalties of crime, exacts not revenge, but redress, or retributive justice. There is nothing inherently vindictive in compelling an individual to pay a penalty or a price for wrong done to his fellow-man any more than there is in compelling him to discharge any other obligation. The State, in undertaking the delicate task of adjudication, acts without feeling or prejudice, and with the sole object of dealing out even justice, so as to prevent a resort to such expedients as lynching, or a vendetta, or some other form of irregular vengeance. Retribution asked for under these conditions is free of all taint of vindictiveness. But deep down somewhere in the inner consciousness of mankind the idea of the necessity for some expiatory sacrifice, by way of atonement for wrongs done, finds its real and instinctive justification. Both civilised and uncivilised nations act on this idea in framing their laws and customs; and offenders are accordingly

required to "purge their offences" by undergoing some kind of suffering or discomfort that bears at least a rough proportion to the extent of their misdeeds. For the criminal himself retribution is a wholesome and elevating influence: he who makes it does something to satisfy his conscience, takes an important step towards his own regeneration, and invariably feels himself to be a better man.

With a view to the prevention as well as the repression of crime, it is also very essential that all legal punishment should have in it a deterrent element which is likely to appeal to the evilly-disposed, whether they may be actually criminal in conduct or not. The desired effect of warning off men from crime, which is intended for *potential* as well as for actual offenders, is in practice much more frequently attained with the former class. We have already seen that our existing penal system has no terrors for those recidivists who form the bulk of the convict population, and that a new system of control has become necessary for this class in the interests of society. The deterrent effect of penal servitude, however, on minor offenders, and on persons with dormant criminal proclivities, is still sufficiently

strong to keep a steadily increasing proportion of the population outside its range. Even local prison treatment acts as a controlling influence on many moral weaklings who incline to the commission of minor forms of delinquency. In regard to actual criminals, if we can judge from their previous convictions, it would appear that the deterrent effect of our present penal methods is in an inverse ratio to their length and severity. The percentage of male convicts with previous convictions is 88, while that of male local prisoners is only 57. As chronic drunkards and vagrants account for a very large proportion of this 57 per cent, it is obvious that many minor offenders in local prisons find one experience sufficiently deterrent to prevent their return. It is probable that the low diet of the short sentence, which is designed to make it "sharp," has the beneficial effect of making timid adventurers into the confines of lawlessness so sorry for themselves that they hurriedly retrace their steps.

Of all the questions connected with penology which are discussed by critics of our prison administration, none appears to be so imperfectly appreciated or understood as the determent of persons from the commission of

crime. The categorical statement that "our prison system is a failure because it does not *deter* men from crime" has been made with such emphasis and iteration that it has come to be accepted as if it were a truism. But are we likely to make the system more of a success by resorting to more deterrent measures? It is clear that no increase of severity, either by prison treatment or prolongation of penal sentence, which would meet with the approval of the critics themselves, or be tolerated in any modern prison, would be at all likely to reduce crime in general or suppress habituality. The pages of the Newgate Calendar, and the whole history of the repressive era, have taught us the lesson that crime lives and thrives on severity. Neither torture nor starvation, neither death penalty nor exile, has succeeded hitherto in diverting from criminal courses men who accept the risks of their calling with the same light-hearted indifference which characterises those who confront the perils of an unhealthy occupation. There is, then, a limit to the efficacy of deterrent treatment; and experience shows that it appeals less to the bold operator than it does to the minor offender, or to the hesitating individual who is at the parting of the ways.

For waverers in this latter category the deterrent principle is an unmixed blessing, and an incentive to virtue that is incalculable in value and far-reaching in effect.

Some theorists maintain that there is no ethical justification for the practice of inflicting punishment on a guilty person with a view to deter others from committing crime, and that society has, in fact, no right to intimidate the innocent by punishing the guilty. But this is surely a perverted and fantastic way of looking at things. The theory seems to be a development of Tolstoy's amazing doctrine that we have no right to punish at all, and to be an echo of the revulsion of feeling that occurred in regard to the heroic penalties of a bygone age. Unless a guilty person is punished beyond his deserts, or with undue severity, there cannot be any reasonable basis for such a contention. If we beg this part of the question, as is generally done for the purpose of the argument, and assume that the culprit is over-punished for the act he has committed, the unjustifiable character of the proceeding is manifest. Otherwise the practice would appear to be both reasonable and equitable. The actual offender suffers no *wrong*, the non-criminal section of the public is

totally unaffected, while the waverer, who is on the brink of criminality, is provided with a strong reason for reconsidering his position and modifying his intentions. The deterrent principle, which aims at "encouraging the others," is recognised in all penal codes, and it cannot be considered an immoral expedient in dealing with crime. It is, on the contrary, a double-edged weapon of the highest value. Its effect on the actual offender may be, and often is, absolutely negative; but on persons who have a tendency to crime its force is incalculable, and many times greater and more far-reaching than on any individual delinquent. Moreover we could not, if we would, absolutely limit and confine the deterrent effects of any punishment to the individual who actually suffers it, unless the penalty were of the most trifling and nominal character, so that our making use of an offender to point a moral or to teach a lesson need not disturb the conscience of even the most sensitive humanitarian.

The typical application of the deterrent principle, as an aid to the prevention and repression of crime, is found in the use of the death penalty for wilful murder. To so small

an extent does the spirit of mere vengeance enter into the administration of our criminal law at the present time that the sacrifice of two lives in cases of homicide would seem to be a clumsy and primitive expedient if the object aimed at were mere payment in full for the offence committed. The justification of the death penalty rests on a much wider basis. If respect for human life is to be forcibly impressed on that numerous class of persons existing in every community who are actuated by revenge, or greed, or jealousy, the supreme penalty of the law, when inflicted on a culprit for the worst crime known to society, is a warning and restraining influence more potent and impressive than any other known to mankind. We find, accordingly, that almost all the countries of Europe, and nearly all the States of America, retain the death penalty for wilful murder in their penal codes. Many of them, however, use it so sparingly, or apply it so irregularly, that the full effects are not always obtained. This divergence of practice makes it difficult to estimate the deterrent effects of capital punishment in different countries; but it may be stated with confidence that life is more secure where the death penalty is a

reality, and the criminal laws are administered with firmness and uniformity. There is no country in the world which has more regard for the sanctity of human life than our own, or a better record in regard to its preservation; but we do not hesitate to sacrifice one life with a view to save others, and to restrain the perverse imitative faculties of those who may be tempted to commit homicide—a practical proof of the belief of our legislature in the deterrent effect of the death penalty. There can be no doubt that this belief is shared to a large extent by our criminal classes, of whom but a very small proportion care to risk their necks by committing murder when they are engaged in felonious pursuits. Further, the commutation of a death sentence to penal servitude for life is always a welcome relief to even the most callous of murderers. The late Sir Edmund Du Cane's classic story of the convict in Australia, whose clandestine letter to a friend at home fell into the hands of the authorities, points to the same conclusion: "They top a cove out here," he wrote, "for slogging a bloke [warder]: that bit of rope, dear Jack, is a great check on a man's temper."

The statistics of homicide in an international point of view do not throw much light on the efficacy of capital punishment, since the death sentence is so seldom carried out in countries which retain this penalty in their code. We know, however, that in Italy, where capital punishment was abrogated in 1888, the number of homicides is four times greater than it is in Great Britain; also that in Switzerland the abolition of capital punishment in 1874 was followed by such an increase of homicide that in 1879 each canton was empowered to restore it to the penal code.

Our own statistics of homicide vary little from year to year, but, when they are reviewed over a long period, they indicate steady and satisfactory improvement. The following figures, taken from the Judicial Statistics for 1909, illustrate the progress made in regard to this particular branch of serious crime :—

NUMBER OF MURDERS REPORTED TO THE POLICE AS COMMITTED

	Annual averages.	Estimated population of England and Wales.
1895-9 . . .	81	31,061,000
1900-4 . . .	99	32,526,000
1905-9 . . .	96	34,547,000

NUMBER OF PERSONS TRIED FOR MURDER

	Annual averages.	Proportion to 100,000 population.
1865-9 . . .	69	.32
1905-9 . . .	63	.18

These statistics tend to show that respect for human life, whether it may be due to the deterrent influence of the death penalty or to other causes, is at least more marked now than formerly, and that the effects of our system are at least unfavourable to the growth of this worst of crimes. The infliction of the death penalty is now surrounded by so many safeguards, such as the right of appeal to court, stringent medical inquiry into the mental state of accused persons before and after conviction, and further appeal to the Secretary of State for the exercise of the prerogative of mercy, that the objections to it have lost much of their force: there is now no difficulty in getting jurors to convict, nor any necessity to question them, as they do in America, as to their opinions on the subject of capital punishment; while abolition, which has been proposed and discussed in parliament on eight occasions with adverse results, has for the time ceased to

figure in political programmes. The death penalty accordingly is retained in our code, and although it may be inflicted at the present time for four offences—high treason, murder, piracy with violence, and destruction of public arsenals and dockyards—it is in practice reserved as a *dernier ressort* for aggravated cases of homicide. Public opinion at present coincides with the view of the Frenchman who held that, if capital punishment were abolished, the State should promulgate an order to the effect that henceforth it would guarantee the lives of *murderers only*.

CHAPTER III

ON PUNISHMENT—*continued*

The effect of deterrent principle on prison population—The cult of idleness—Fines—Preference shown for imprisonment in lieu—Time to be given for payment—Prisons must not be made too comfortable—Discipline—Conduct an index of disciplinary control—Type of criminal now not so rough—Both regulations and work were formerly irritating to a rough class—Hard labour as punishment—Unproductive work—Drill and discipline.

FROM the foregoing considerations it will be gathered that our penal system at present has a decidedly deterrent effect on murderers, and on occasional and first offenders, while it has apparently but little influence on habituals; but nevertheless it keeps a constantly increasing proportion of the general population out of the range of its operations. To relax the more penal and deterrent features of prison treatment under these circumstances would seem to be an irrational and injudicious policy. Prisons already have a mysterious attraction for an idle class to whom the ordinary con-

ditions of restfulness, with freedom from care, found by them in prison life, supply a felt want. The more fastidious type of tramp has already discovered in the Prison Commissioners merits which are apparently wanting in Poor Law Guardians, and he bestows his patronage accordingly, so as to swamp the prison accommodation in some favoured districts. Unhappily much of the socialistic teaching of the present day tends to the manufacture of indolence, and acts as a direct incitement to an idle class to look to the State for help which they should be able to supply themselves. To learn and labour truly to get one's own living has become an intolerable obligation to men who are constantly leaning on the State, or on private philanthropy, for their daily wants, and who are too often led to think that by *becoming criminals* they can divest themselves of all their personal responsibilities and social obligations. The pauperising and demoralising effects of these doctrines on the manhood of the nation are most pernicious and deplorable, producing much more evil, present and palpable, amongst a weak and invertebrate class, than any prospective good that is promised them even in the rose-tinted

forecasts of a good time to come under socialist management. The cult of idleness, so prevalent in this class, is a social evil of the first magnitude still awaiting rectification; meanwhile it is an obstacle well-nigh fatal to the social and industrial regeneration of those who follow it. As one whose daily duty it was for many years to examine medically these social ineffectives, and gauge their capacities for work, I can claim some authority to speak on the subject. Thousands of them in all stages of development have passed through my hands—lazy, dawdling, slouching youths and men, who seemed to consider it a bore to think, speak, or act, living like vegetables, and dead to all sense of manliness and independence. The contemplation of them with their wasted muscles, and atrophied energies and faculties, pointing to long neglect and disuse, often made me long for a conscription which would turn them once more into men, and compel them to utilise the last national characteristic left them, their stolid obstinacy, in the interests of their country, if they could not be induced to exert it in their own. The idleness of the idle rich is a negligible problem when compared with that of the tribe of

vagrants and drifters whom we are at present manufacturing in such magnificent and increasing numbers to fill our casual wards and prisons. In the year 1910 there were sent to prison *direct* for vagrancy offences 33,766 persons, in addition to 8438 who were committed for Poor Law offences, namely, neglecting to maintain family, misbehaviour by paupers, stealing or destroying workhouse clothing, etc. When the State comes to nationalise these drones as a means of production, under socialist auspices, it will be confronted with a difficult problem.

But there seems to be another class of persons to whom the disadvantages of prison life under modern conditions are becoming much less irksome and deterrent than they were in former times, namely, those who accept imprisonment when they have the option of paying a fine. The editor of the latest Judicial Statistics (1909) calls attention to this sign of the times as follows :—

> It will be seen that during the years 1893-1900 there was a perfectly steady decrease in the percentage of persons fined who went to prison in default of paying their fines. There is no difficulty in explaining this: every year new offences are created by legislation which may easily be com-

mitted by well-to-do persons, and every year fines are more and more frequently imposed on persons who can pay them without any severe sacrifice. We should, therefore, expect to find the progress in the figures which is clearly marked before 1900 continued during the present century. The exact contrary is the case: the percentage of persons fined who go to prison in default of payment has risen in almost every year since 1900, so that in 1909 it was 20 per cent higher than it had been in any year before, and higher by more than 5 per cent than it was in 1900. And yet since 1900 the cases that have increased most, as already shown, are precisely those in which the offenders are best able to pay their fines. . . . Something has clearly occurred since 1900 to make default in payment of fines commoner than it formerly was: the tendency is continuous and regular; there is no change of the law, nor any apparent change in the administration of the law, to which it can be attributed, nor can it be reasonably explained by the greater poverty of the persons fined. . . . It may be that *prison is losing the terror it once had; that imprisonment is coming to be regarded more as a misfortune than a disgrace*, and that, consequently, convicted offenders are less inclined than once they were to make pecuniary sacrifices in order to escape it. . . . When it is seen that in 1909 20 per cent of the persons fined were imprisoned in default of payment, while nine years before the proportion was only 14.73, it cannot be denied that during the present century there has been retrogression rather than progress in this respect. [The italics are mine.]

This apparent partiality for prison, as an alternative to the payment of a fine, evinced by solvent persons will be a revelation to many people; but it is by no means surprising to those who are familiar with the inner working of our prisons, and with the extent to which the hardships and disagreeables of life in prison have been reduced under government control. It is none the less an unhealthy sign from a social standpoint, indicating, as it does, a complacent attitude on the part of some minor offenders to the disgrace which has hitherto been associated with even a short spell of imprisonment.

The system which has now been in force for several years of allowing prisoners to shorten their term of imprisonment by part payment of fines has proved so beneficial in practice, and has been so freely taken up by prisoners themselves and their friends, that hard cases in this category have considerably diminished in number. The efforts of relatives and friends, who are often in very poor circumstances, to lend a helping hand to those in trouble frequently throw a pleasing light on the more kindly side of human nature. Wage-earners constantly apply to governors of prisons to

ascertain the exact sum which will suffice to liberate their friend on the day on which their own wages fall due; and the first slice out of a small weekly wage is constantly being devoted in this way to the release of an erring friend who may have no claim on the giver. I remember a man coming to Holloway to pay the fine of a woman who had a rather ordinary name like Mary Smith. The prisoner, on being informed, to her surprise, that her fine was paid, donned her private clothes with alacrity, and was then taken to the office to sign the usual papers, when, unfortunately, it was discovered that she was not the right Mary. The man, however, seeing her obvious distress and disappointment, insisted on paying her fine as well as that of the right Mary, and took them both out in triumph.

The success attending this system of part payment has induced the authorities to propose a further development in connection with it, for which, however, legislative sanction will be required. With a view to keep minor offenders out of prison altogether, certain offenders who incur fines, and who are so far respectable that they have a fixed place of residence, will be allowed to enter into an agreement to pay by

instalments. It is hoped by this measure to preserve many first offenders from the prison taint which handicaps several of them in after life, although familiarity with it for the time being only produces contempt. Whether offenders will prefer prison to payment even by instalments, under the new scheme, will depend largely on the relative values of the game and the candle as estimated by these offenders after a study of the discipline, diet, work, recreation, and other features of prison life that will be ruling when the choice is presented to them.

We have seen that prisons have at present a certain attractiveness for an idle class of whom no less than 42,000, or one fourth of the total commitments, patronised the local prisons in 1910; that the deterrent effect of a short sentence, as an alternative to the payment of a fine by those who can afford it, is tending to diminish; and further, it is certain that a large number of other petty offenders deliberately make for prison as a port of refuge from the storm and stress of life. If we are to check the inroads of these undesirables on the hospitality of the State, it is obvious that we should not make our prisons much more comfortable. The

disparaging accounts of prison life which are generally given in newspapers and magazines ignore, for the most part, its apparent popularity, talk instead of degrading conditions, brutalising effects, and so forth; and hint not obscurely that the whole system, which has been evolved under the direction of many humane and able Secretaries of State, legislators, and administrators, is the invention of some malevolent crank who cares neither for the interests of the prisoner nor the community. This is far from being a correct view of the case. In a book recently published — *A Holiday in Gaol*, by Frederick Martyn (Methuen)—the writer has given a candid account of his experience of eighteen months' hard labour for an offence under the Bankruptcy Acts. He looks back on his time in a local prison as "the finest rest cure," which has given him a capacity for enjoyment "that I don't remember to have possessed in my salad days." He did not find the food unpalatable, though he missed pepper and mustard. He found the manual work light, and the opportunity of recreation in the way of reading extensive. He thinks the warders are humane, and reluctant to bring prisoners into trouble; "and if there are any persons in our

prisons who do work that can honestly be described as *hard labour* it is the warders, and not the men who are sentenced to it."

A description of a long sentence of imprisonment, if it were written or inspired by an average *habitual*, would probably differ widely from this straightforward account given by one who appears to have accepted his punishment in the right spirit, to have gone through it without whining, and to have felt better in conscience for having purged his offence, and thereby made what amends lay in his power. Temperament counts for so much in matters of this kind that sentences must act unequally in the cases of different individuals; but, *cæteris paribus*, they tell much more on the occasional than the habitual offender. There is generally an air of unreality in the ordinary delineations given to us of a prisoner's life and feelings, which suggests rather a sensitive imagination on the part of the literary or dramatic author than an actual state of things. If some prisoners undergo, as we are told, "the tortures of hell," they are in my experience very exceptional; neither the statistics of suicide, insanity, nor mortality in prisons support this idea. In 1910 there was *no* case of suicide in

the convict prisons; five cases only occurred in a local prison *average daily population* of 18,521. It is obvious, therefore, that many humane people allow themselves to become unnecessarily conscience-stricken on the subject of the mental torments inflicted on prisoners. If we are to adapt prison treatment to the fancies of imaginative persons with overstrung sensibilities, who think much more of the plight of the offender than of that of his victim, we should also adapt the dietary scale to the requirements of the most fastidious palate or of the most voracious appetite to be found in the establishment. I have no desire whatever to make light of the suffering of any unfortunate prisoner who may be educated and accomplished, refined in sentiment, and, perhaps, "of a social status immeasurably superior to that of his taskmasters," who probably does not realise the necessity of regulations which may seem to him harsh, foolish, or inexplicable; but it is clearly as impracticable for the authorities to make prison a comfortable place of sojourn for a person of this class as it is to make it uncomfortable for a tramp who has a low standard of living at the best of times, and who always sets rest and quiet before liberty. Discipline is the

very first essential for a penal institution, however irksome it may appear to be to the inmates. In a microcosm composed of lawless persons, the rule of strict and unhesitating obedience is the sole means of maintaining that order which is as necessary for the safety and comfort of the prisoners themselves as it is for the protection of their keepers. Every prison governor knows that he has in his charge a quantity of highly inflammable material which, once it is ignited, soon gets out of hand, and which it is his business to control. Insubordination and violence are very apt to take on an epidemic form in prison, females especially being prone to this perverse kind of mimicry. For these reasons an absolute compliance with orders is indispensable on utilitarian grounds. But discipline in a penal institution serves a much more important purpose by imparting to prisoners that power of self-control which is so generally missing from their moral equipment, and which it is the main object of every good prison system to inculcate. The chief merit of any system, in fact, depends to a large extent on its capacity for imparting powers of self-control to those who are subjected to its influence. So vital is this object

held to be by modern penologists that we find Americans, who are by no means addicted to militarism, dispensing indulgences to their prisoners with lavish hand, but nevertheless insisting on a strict code of military discipline and drill in their State Reformatories. Moreover, they enforce these measures by stern methods of punishment and restraint which we hesitate to adopt in this country. The aim of penologists in the present day is to cultivate and reinforce whatever will-power criminals may possess, rather than to conquer it by measures of repression. The will of the criminal is, in fact, a weak thing which requires to be strengthened, and not, as was formerly supposed, a strong thing which had to be broken.

The general conduct of prisoners under any scheme of management affords a tolerably fair index of the success or failure of the disciplinary regulations in imparting habits of self-control. If we apply this test to our own figures, we find that the percentage of our prisoners who were punished for prison offences, according to the latest returns, was only 7.6—a fact which has a significant bearing on the general efficacy of the system in force.

That more than 90 per cent of a lawless class of persons can be induced, under a code of discipline that is essentially humane, to exercise their will-power so as to keep out of trouble under the restrictions of ordinary prison life, is a striking testimony to the reasonableness of the regulations, and tends at the same time to confute the theory that all criminals are unaccountable for their actions and incapable of exercising free will. It is true that in days gone by a large proportion of the criminal class consisted of undisciplined and ignorant persons who resorted to the most violent behaviour in prison, committed offences of the gravest character, and brought upon themselves much punishment which they endured with a reckless spirit of defiance suggestive of an impaired responsibility due to ignorance; but since the passing of the Education Acts almost all prisoners have had at least the benefit of some discipline and moral instruction in the *schools*, if they have not enjoyed these advantages in their homes, so that the type of untutored savage with whom prison authorities were familiar thirty years ago, and who had been from his earliest years a total stranger to all religious and

educational influences, and consequently insusceptible to all moral restraints, is practically non-existent to-day. In the year 1880 the proportion of the total number of persons committed to prison on conviction who could neither read nor write was 33.6. In 1910 this proportion had fallen to .72. At a time when a third of the prison population consisted of an undisciplined and ignorant class, it will be readily understood that violence of conduct was the natural reply of this type of criminal to the regulations for enforcing order and obedience. Prison governors were confronted with the difficult problem of training to habits of industry and good conduct malefactors who had already passed the plastic age, who were steeped in criminality, and were as devoid of all moral sense and purpose as if they had never been in touch with civilisation. Prison offences classed under the head of violence were constant and serious. Assaults on officers and prisoners, destruction of prison property, refusals to work, and malingering of a very determined character were everyday incidents of life in a convict prison. Happily this state of things is by no means so prevalent now. Offences of violence in all the prisons

have steadily diminished, and are still declining, so that in 1910 they numbered only 1119 with a daily average population of 21,710, the corresponding figures for 1900 having been 1437 when the daily average population was at the lower figure of 17,210.

It must be admitted in extenuation of much of this insubordinate conduct that the general conditions and regulations of penal servitude, and of imprisonment, previous to the year 1880, were peculiarly irritating to a refractory class of criminals. Many of the provisions of the law were unscientific and irrational in theory, in addition to proving odious in practice. Convicts especially started with a harsh sentence, which seemed to open out a vista of years of retribution for what appeared to them and to many others trivial offences. To be compelled to work at all was a hardship to many prisoners; but when the work selected was deliberately designed by law to penalise by its very uselessness, and they found themselves engaged in the profitless labours of Sisyphus, they not infrequently rebelled with ferocity. Unproductive labour was in this way a constant source of exasperation; and cranks, treadmills, and similar con-

trivances, which accomplished nothing beyond wear and tear, did not tend to improve the minds, morals, or tempers of those who were recalcitrant. I remember a deputation of gentlemen from the continent, who were making a tour of the English prisons, inspecting a cell crank about this period. An enthusiastic officer pointed out to them its inestimable ergographic merits—that the dial-plate recorded the revolutions with unerring accuracy, that the prisoner could not possibly shirk work, that any one could turn a handle, and so on,—but they were not at all impressed. One of them, in fact, holding up his hands in horror, explained that he thought the crank a demoralising and foolish contrivance for the purpose; and he was undoubtedly right in his opinion. The warder of the division was very anxious to know afterwards what the gentleman, who was evidently acquainted with prison management, had to say "agin' the crank." On my telling him that he did not think it was good for the mind or morals of the prisoner, he said, "Isn't it doing him good to be doing no harm? he's larnin' to count anyway, and if anything goes wrong with his mind I'll put his name down for the doctor."

Unproductive labour nevertheless died hard, and only by a very lingering process in English prisons. The conception of hard labour as the penal feature *par excellence* of a sentence of imprisonment (although hard labour, in the sense of laborious and monotonous work of a useless character carried out through long hours and under grinding supervision, is no longer a feature of our penal system) still lingers in the judicial mind, and influences the procedure adopted in many of the courts, especially those of Summary Jurisdiction. In their Report for 1909 the Prison Commissioners refer to the subject thus :—

> We believe, and have before stated, that the main obstacle to the proper classification of prisoners lies in the continued use by the courts in their warrants of commitment of the antiquated formula of imprisonment, "with or without hard labour." Since the Act of 1898 this formula has ceased to have any real meaning. It is practically "the division" which carries treatment in prison, yet, in spite of this, we have from 50,000 to 60,000 prisoners a year, who are sentenced to imprisonment without hard labour, and all, with few exceptions, placed in the third division. In our opinion, it would be a better and a simpler system if the warrant merely denoted the division in which the prisoner should be placed for prison treatment, and the term "hard labour" would no longer be applied.

Under the law, all prisoners who are medically fit are obliged to "labour hard." Their marks for stage gratuity and remission all depend on this. The term, therefore, has ceased to have any useful meaning, and it would be an advantage if the distinction between imprisonment with and without hard labour were got rid of. As long as it lasts, we do not believe that any real effect will be given to the intention of the legislature, viz. — that prisoners should be committed to one of the three divisions by the courts, having regard to the offence and the antecedents of the offender.

It is probable that the idea of work as a mere engine of punishment is a relic of the era of unproductive labour, or perhaps of a still earlier period when sturdy beggars had this obligation imposed on them as the most disagreeable and deterrent remedy which the wit of man could then devise for their correction. The idea, however, is now eliminated from the programmes of all modern penologists; and productive labour, more especially in the form of skilled industries in which prisoners can take an intelligent interest, is at present regarded as a highly *reformative* influence, which is probably more effective in its results, and more general in its application, than any other that can be brought to bear on a criminal class. The industrial and economic

advantages of this change of view are beyond question, and they constitute the greatest boon which modern penology has conferred on prisoners. A somewhat analogous change of view has taken place in regard to certain forms of physical exertion, such as shot-drill, which were formerly imposed on prisoners for purposes of punishment. The sight of a batch of men in the exercise grounds engaged in a kind of musical walk, and carrying about heavy shot from one point to another rhythmically and in obedience to orders, was an aimless and irritating kind of correction. Physical exercises are now directed to much more improving and useful objects; and they are carried on so as to interest the prisoners, to develop physique, and to impart to them a well-set-up appearance which contributes to self-respect rather than to the humiliation which was too common under the old system. Reformers in England and America set a specially high value on physical culture as a reforming and uplifting agency, as well as a disciplinary measure, for those who have lapsed, or been led, into crime. Both countries accordingly give a very prominent place in their prison curricula to those forms of physical

exercise, drill, and discipline which make *morale* in fleets and armies, and which are directed to the attainment of similar results in a criminal population. Drill and discipline are found in practice to effect a wonderful transformation in the hooligan class who come under Borstal treatment. Youths of slouching gait and furtive demeanour are rapidly endowed with a manly bearing and straight outlook which are in themselves valuable personal assets for a new start in life, and which their instructors regard as indications of the best augury for their moral rehabilitation. In the home, the school, or the ordinary business of life, rational methods of discipline are educative influences which contribute largely to national efficiency; but in prison they are the very foundation-stone of all successful treatment whether it be directed to the determent, the punishment, or the reformation of the offender. It has been said that every crowd of people, no matter how intellectual its component parts may be, has in it a latent tendency to degenerate into a mob; but a crowd of criminals, bereft of orders and devoid of discipline, always has in it (*pace* the advocates of the polite-request system of management) the making of an

unthinkable pandemonium. Prisoners who resist or resent disciplinary control in prison are invariably self-willed and self-centred persons who take no thought of the common good, and who might never have seen the inside of a prison if they had had the benefit of a little more discipline in their early days.

CHAPTER IV

ON RECLAMATION

Place of reclamation in a prison system—American practice not suited to British types—Vagrants increasing—Incorrigibles—Punishment the first step to reform—Prevention is the best for social protection—Elmira treatment—Murder in United States—Restraint of criminal necessary for social safety—Nature of crime as well as its treatment bears the stamp of nationality—Reformatory and deterrent treatment variable in different circumstances—Public opinion acts on course of justice—Also on prison reform—Prejudice and sentiment—Reclamation needs to be supplemented by retribution—Habitual criminals—Tolstoy's views—Moral hebetude and insensibility to pain in criminals—No intellectual or mental deficiency in professionals—Objects to be aimed at—A social outlaw—Recidivists—Star class—Mr. Begbie—Mr. Thomson's analysis of recidivist convicts—A convert.

ALL civilised nations agree that reclamation of the criminal is one of the paramount objects of a good prison system. There is, however, wide difference of opinion amongst them as to the question whether or not reclamation should be absolutely the primary consideration in a sound scheme. The penal and deterrent objects of a sentence of imprisonment appeal much more strongly to the judgment of many administrators as the essential factors in repressing criminal

tendencies and practices. In the United States of America, where experimental treatment of the criminal is conducted on very generous lines, ardent reformers maintain that reclamation is the only justifiable object of any sentence of confinement, and that the unhappy criminal himself is purely a victim of circumstance who can be cured by appropriate treatment in a moral hospital, and guided back to good citizenship. We find accordingly that grown men of thirty years of age, who have been convicted in the criminal courts of serious offences, such as burglary and even murder, are commonly committed to "State Reformatories" as "inmates" to be treated, and not as prisoners to be punished. Sent in by the courts on indeterminate sentences, these offenders are liberated on parole after a longer or shorter period of detention when they are deemed fit for discharge, and handed over to the care of Probation officers. The crisis of moral convalescence is determined by the superior authorities of the Institutions, and the average period of detention under treatment is about a year and a half. The discipline to which they are subjected is strict and of a military character, and all sorts of

expedients are resorted to in order to stimulate their mental, moral, and industrial rehabilitation. They seem, in fact, to be taken up by a piece of ruthless machinery, and hustled willy-nilly into a state of repentance for the time being, and resolutions of amendment for the future, in a way that makes our own methods appear leisurely and even dilatory when compared with such lightning proceedings. Some *a priori* doubts might reasonably be entertained as to the lasting character of quick-change conversions obtained under these conditions. It is therefore hardly surprising that Americans themselves are now discovering that their statistics of cures are not so encouraging as they were when the Elmira treatment was started. An analysis of the inmates paroled from Elmira, lately made by the New York Prison Association, shows only a doubtful 50 per cent of cures as compared with the 80 per cent formerly claimed. The success of the scheme, nevertheless, after all due deductions have been allowed, is very considerable for an adult population, and it is probably much greater in the land of its origin than it would be amongst the older and more slow-going nations of Europe, since it is better

suited to the temperament of the ordinary American citizen, and to the hustling atmosphere in which he passes his daily life when out of prison. From my experience of the British type of habitual or vagrant, so largely represented in English prisons, I consider it more than doubtful whether the Elmira system would exert the slightest beneficial effect on the predatory or ne'er-do-well propensities of either of these difficult classes of offenders. If you try to hustle an habitual into taking an interest in things that promise a mere humdrum way of life outside, he will neutralise all your reformatory endeavours. Appeals to his manhood, band music, and a newspaper produced in the prison, unless it gave the latest betting tips, would arouse merely an evanescent interest in him. If you put pressure on a vagrant, who generally cerebrates as slowly as he works, and try to *give* him no time to think, he will simply *take* it in spite of your efforts by a stolid passive resistance. Reclamation in his case is of necessity a tedious process. Much more time is required—even if he be taken in hand in the early stages of his career—to Elmirify an offender of this type into an industrious

and useful citizen than the usual period of detention in prison allotted to him for the negative kind of offence he generally commits. The brief spells of incarceration he undergoes at present, with all the apparent disadvantages of the cellular confinement and scanty diet attaching to a short sentence, are to him restful rather than punitive interludes in his quest for an easy life. Idleness, in fact, is his chief solace, and for it he is willing to sacrifice temporarily his personal comforts. Prison fare and prison life under present conditions are not only not irksome to him, but they even hold out considerable attractions which rival those of the workhouse. Vagrants accordingly have been flocking into our prisons in increasing thousands for several years past, so that quite new methods of treatment, involving much longer periods of confinement, have become necessary, and are now being devised on the principle that an habitual vagrant is no longer to be treated as a criminal at all, but as a person requiring detention on account of his *mode of life*.

But the original founders of Elmira cherished several illusions on the subject of crime which the existing authorities of that

institution have long since had to abandon under the stress of a little practical experience in dealing with the actual living thing. One of the original tenets was that no criminal was irreclaimable, and yet we find these authorities complaining in a recent report not only of the existence of the incorrigible, but of his actual intrusion into their domain in sufficient force to affect materially their statistics of recovery. Again, it was maintained by these theorists that the proper treatment of the criminal consisted in reformatory measures pure and simple, and that penal measures were alike unscientific and inhumane; but even in Elmira the restrictions on personal liberty involve punishment, and the fact cannot be altered by merely changing the name of the institution from prison or penitentiary to reformatory. Criminals cannot be reformed until they are placed under some kind of restraint which is tantamount to punishment, so that there is practical, if not ethical, reason for the doctrine that punishment is the first step to reform. Another dogma laid down was that society is best protected by *reforming* the criminal. As a matter of fact it is far better protected by preventive

measures that arrest his genesis and development. But what of the deterrent principle? It may be that a period of confinement in Elmira, even with the probability of early release on parole, still has some terrors for minor and inexperienced offenders, but it cannot in the nature of things exercise any deterrent influence on the worst kind of criminals who commit murder, burglary, etc., or on those who live by crime, or on those who contemplate the prospective attractions of a criminal career. American writers have lately called attention to the enormous and increasing number of murders committed in the United States. Mr. Hugh C. Weir states that in a recent census of American crime a conviction is secured in only 1.3 per cent of homicides: Chicago has the unenviable record of producing 118 murders a year, while London, which is four times the size of Chicago, produces only twenty. This callous disregard of human life appears to be due partly to the inefficiency and criminal collusion of the police, partly to a tardy and lax administration of the criminal law, and partly to the non-deterrent effect of their methods of dealing with crime. Reclamation of the criminal, then, is not the

sole object to be aimed at by the framers of a prison system. So far as the safety of society is concerned, reclamation of the criminal is of course a matter of considerable importance; but since this desirable object is very often unattainable, more especially in the case of that large and dangerous class who practise crime as a habit, society has a right to protect itself against this class by the much more certain and feasible policy of keeping them in custody and under control for reasonable periods of time, so as to limit their capacity for social mischief, and incidentally to provide more time for their possible reformation. It follows that the restraint of the criminal is quite as necessary in the interests of the community as is his reformation, and that society is really best protected by a judicious combination of these two kinds of treatment.

It is a well-known phenomenon in connection with the perpetration of crime that the working methods and weapons of criminals very generally bear a characteristic and distinct impress of their nationality. The technique and equipment of a Parisian Apache, with his dagger, pistol, and spiked armour, are much more artistic and deadly than those of a London

hooligan, who generally relies on the less theatrical weapon that "does not flash in the pan." When, therefore, some act of unusual violence is recorded, it is very often possible to trace it distinctly to the hand of a foreigner. The notorious Tottenham outrages in 1909, when many police and civilians were shot in broad daylight by a couple of thieves, and the Houndsditch murders in December 1910, when five of the city police were shot (three fatally), and one of the criminals engaged was also killed—accidentally shot by one of his companions,—were at once recognised as offences alien to the methods of our own criminal class. Many of the ways and methods of dealing with such miscreants in their own countries are similarly alien to our customs and practice, but we must not jump to the conclusion that these methods, which are based on experience, and traceable to a large extent to the national temperament, are wrong and ineffective; or that the criminals themselves are the object lessons of inefficient systems. Every civilised country has behind it at least a large experience in dealing with crime, and probably knows best the remedies that are most likely to act successfully on the national

characteristics of its own people. The extraordinary predilection of American reformers for reformatory treatment of *full-grown men* can only be accounted for in this way. Climatic conditions in the United States seem to produce a sanguine and hopeful spirit in the reformer, and at the same time a buoyancy of temperament, and a flexibility of adaptation in the offender, which go far towards explaining successes that are only attained in Europe with much younger criminals. We find accordingly that American theories as to the *paramount* efficacy of reclamation are not in favour with other nations, with whom the penal and deterrent effects of a sentence still claim considerable recognition. The more generally accepted idea is that a proper prison system should punish and deter as well as reform. But the relative importance of these three principles not only varies in different systems, but also in the same system at different times, partly on account of fluctuations in public opinion which may lead to specific legislative changes, and partly on account of a certain elasticity in the methods of administering the laws which are already in force. The prevalence of some horrible kinds of crime (such

as dynamite outrages, or shooting by armed burglars) which terrorise society, and arouse the very natural instinct of self-preservation, sometimes calls imperatively for repressive legislation in which penal and deterrent provisions necessarily predominate—all ideas of reclamation being lost sight of for the time. On the other hand, a decline in the numbers of some particular offence, such as robbery with violence, not infrequently leads to a more merciful administration of the law, so that the penalty of corporal punishment, which is purely deterrent and punitive in aim, not infrequently becomes suspended for the time, while reclamation is given a chance to effect its object. The action or reaction of public sentiment on the course of justice is by no means fanciful. Sometimes the effect is startlingly sudden and unexpected. Quite recently the French government was on the point of abolishing the death penalty which had for some time been falling into disrepute and disuse. A committee had been appointed to inquire into the subject, and they had almost concluded to recommend abolition, when the occurrence of a particularly brutal murder (*l'affaire Soleilland*) set up a frenzy of reaction in the Press and amongst

the public, with the result that not only was the measure dropped, but executions became much more frequent than they had been for many years previously. This influence of public sentiment, which is inevitable under the conditions of civilised government, does not tend to evenness and stability in the administration of criminal law. It has, moreover, a prejudicial effect on questions of prison reform and prison treatment. Epidemics of vindictiveness are invariably succeeded by much more wide-spread and lasting epidemics of sentimentalism, to which disorder, moreover, amateur prison reformers appear to be specially susceptible, so that the criminal, who is alternately an object of hatred and commiseration, becomes eventually the spoiled child of a large class of people who constitute the most neurotic portion of society. This is a very undesirable result. If there is one subject more than another which indisputably calls for the exercise of cold judicial reason, apart from vindictive feeling on the one side or sentimental considerations on the other, surely that subject must be the treatment of crime; and it may be laid down with confidence as a truism that neither of these latter states of mind constitutes a

suitable equipment for those who attempt to deal with the hard facts of criminality, while both alike are incompatible with a just solution of the difficult problems which these facts present.

From the foregoing reflections it will, I think, be obvious that reclamation, which is in itself a highly meritorious object, is nevertheless lacking in that essential element of retributive justice which every civilised community has a moral right to exact of those persons who violate laws devised for the public good; that reclamation needs to be supplemented by the other two processes of punishment and deterrence; and that the whole three processes are, in fact, interdependent and necessary factors in the formation of a rational scheme for the repression of crime. It is somewhat remarkable, therefore, that in the United States, which is pre-eminently the land of social experiment, prison reformers have been attempting to ignore penal and deterrent principles, and to rely on reclamation solely, or mainly, for the protection of society; while we in England have been trying to act on all three principles, and have recently added a fourth in the form of a preventive measure, which attacks crime in its

early stages by segregating and specially training young convicted offenders, and in its later stages by preventively detaining in custody, and under new conditions, and for long periods, those habituals who have hitherto proved irreclaimable under the former conditions of penal servitude. Reclamation is now to be tried with this persistent class of criminal on an extended scale, and under circumstances more likely to develop any dormant germs of industry and improvement they may still retain than any that existed before. Prison administrators are under no illusions as to the difficulties of the experiment they are about to undertake, or as to the quality of the material with which they will have to deal. Experience has long since taught them that the success of reformatory measures has hitherto been in an inverse ratio to the age of the offender. Youthful law-breakers have proved generally amenable to civilising and curative treatment; while those of mature years and fixed habits have, on the contrary, defied all the zeal and all the efforts of even the most ardent reformers. Those who have had opportunities of studying on *naturalist lines* criminals who adopt crime as a profession, and for a livelihood, know that

they have well-marked characteristics of their own which it is not easy to eradicate by training. Of these characteristics the most prominent are—a rooted aversion to a humdrum existence of regular work; a marked predilection, and very often an aptitude, for devious courses of living which combine a measure of risk and excitement with a sporting chance of considerable profit; and an absence of that moral sense which constitutes the basis of character. Imaginative persons of excellent intentions are apt to overlook some of these considerations, and to evolve from their inner consciousness a type of criminal who is supposed to be susceptible to exactly the same mental and moral influences as themselves; and they set to work accordingly to devise systems of training, which are generally unimpeachable in principle and theory, for the regeneration of criminals, based on this erroneous supposition. The living type, however, is constructed on quite a different model. So far from being an impressionable subject, he is too often apparently as impervious to reason on questions of moral principles as he is blind to the teachings of experience. He understands being a good burglar, or a

good coiner, or a good thief; but the idea of being a good *man* seems to be beyond his intellectual reach. The moral viewpoint of the ordinary habitual is so perverted that he has absolutely no sense of shame. Tolstoy, whose observation of the habits of criminals was much more correct than his theories for dealing with them, notes this peculiarity: "It is usually imagined that a thief, a murderer, a spy, a prostitute, acknowledging his or her profession to be evil, is ashamed of it. But the contrary is true. People whom fate and their sin-mistakes have placed in a certain position, however false that position may be, form a view of life in general which makes their position seem good and admissible. In order to keep up their view of life these people instinctively keep to the circle of those who share their views of life and of their own places in it. This surprises us where the persons concerned are thieves bragging about their dexterity, prostitutes vaunting their depravity, or murderers boasting of their cruelty. But it surprises us only because the circle, the atmosphere, in which these people live is limited, and chiefly because we are outside it."

The moral hebetude of the habitual criminal

has a close analogy to a physical characteristic of his that is well known to criminologists. Every one has read of the callous indifference of the condemned murderer awaiting execution —how he generally eats well and sleeps well right up to the time of execution. This phenomenon is becoming much less common than it was thirty years ago, indicating a more neurotic condition in the modern criminal, and a greater sensitiveness which may in time enable him to respond better to moral influences. But the characteristic to which I refer, and which is not so generally known, is his insensibility to pain. I have myself removed a broken finger for a convict who absolutely refused an anæsthetic, and who watched my proceedings with interest and apparent freedom from pain: he even suggested that I should cut off a spicula of bone so as to make "a tidy job of it." Malingerers afford frequent opportunities for observing this physical peculiarity which denotes a low type of nervous organisation. I have, for instance, frequently laid open acutely inflamed abscesses, which to an ordinary patient with a normal nervous system would cause intense pain, and fished out such foreign substances as bits of thread and wire, which had been purposely

inserted in the flesh by the convicts themselves, without apparently causing any real suffering. In the case of one prisoner who had acute inflammation in both eyes that lasted for several days, and was of a suspicious character, I stumbled accidentally on the exciting cause. The patient was continually tampering with some part of his body, and was an adept at shirking work. He deliberately drank the lotion supplied for his eyes! and I was summoned hastily to find him ill with unpleasant symptoms. I discovered in each eye, tucked in under the lid, a small piece of spring steel which he had no time to remove when his symptoms came on. He admitted afterwards that he had been in the habit of "wearing" them in his eyes for a couple of hours a day so as to get ready for the doctor. Many other instances might be given of this insensibility to pain which is so common amongst criminals. Their consciences, too, would seem to be blunted so as to react very slowly and imperfectly to ordinary moral stimuli in a similar manner.

The moral shortcomings of professional criminals are not due, as might be supposed, to any corresponding intellectual or mental

deficiencies. Many of them are highly intelligent, shrewd, and clever, quick to learn various arts and crafts; and their general education, which implies a certain amount of moral instruction also, is of fairly good average. Out of 1196 convicts received in prison last year only 109 needed instruction in the school standards, and of these only 17 were classed as illiterates. Further, men who can manufacture coin, or "crack cribs," or force safes, or pick pockets, are generally gifted with considerable manual skill and dexterity which they prize as their highest possession, though it may really determine the criminal career on which they have entered, and eventually lead to their undoing. In prison, notwithstanding their dislike to steady employment outside, they will work well at trades and industries, but in a restless, roving kind of way, frequently wanting change until they get the pick of the basket, or a job specially to their liking. In pursuit of these ends they display qualities of ingenuity and perseverance which, out of prison, ought to make for success in life. With all these advantages in their favour, however, they cannot run straight, and it becomes the duty of society either to amend their character, or,

failing this result, to restrain their anti-social methods of carrying out in practice their particular views of life. Hitherto their numbers have been kept down by stopping the supply of young recruits rather than by any curative treatment applied to the practising habituals themselves. I have attempted to describe some of their leading and typical characteristics, as they strike one who has had at least fair opportunities for observation, partly with a view of showing that the reclamation of pupils of this sort is a work of no ordinary difficulty, and that we must not expect any startling numbers of conversions even under long periods of preventive detention; and partly with a view of indicating the lines of remedial treatment that must be adopted in dealing with such hardened material. Stated briefly, the objects to be aimed at should be to alter their moral view-point, and to inculcate in them the work habit. Persons who are endowed with such powers of resistance to the laws, as well as the ideals, of civilised society have to begin by unlearning much of their philosophy of life. Those who have had some experience of the moral atmosphere of a convict prison know well enough how wild

and reckless most of this philosophy is. For the benefit of those who imagine that criminals of this stamp are just ordinary persons, like-minded with themselves, and equally open to the teachings of reason and experience, let me introduce a living specimen of the class, as described by himself at the age of twenty-eight after a criminal career of ten years, who affords collateral testimony in his own person of the incorrigible disposition of our habitual criminals. It is not often we get so complete and graphic a pen picture in autobiography, containing such a frank avowal of the career and aims of a criminal, and affording so clear an insight into his peculiar psychology and his philosophy of life. I take the account as given in the *Standard* of January 7, 1911.

A SOCIAL OUTLAW

CRIMINAL'S AMAZING SPEECH FROM THE DOCK

(*From our Correspondent*)

CARDIFF, *January* 6, 1911.

An amazing speech was made from the dock to-day at the Cardiff Quarter Sessions by a man named Richard Parr, aged 28, who was found guilty of breaking into a shop owned by the Co-operative

Wholesale Society in Splott Road, Cardiff. Before being sentenced, the prisoner, addressing the recorder, Mr. B. Francis Williams, K.C., expounded his view of life with remarkable cynicism and astonishing fluency. The speech was as follows:—

"You have heard a record of a few of the deeds I have been guilty of. I feel proud of them, proud of my career, and proud also to think that the country must go to the expense of finding such a one as I with legal aid. I am one of those degenerates you hear so much about—useless to the country, useless to my friends, and useless to myself. I am a living lie, and I know I shall never be anything else. Life is a gigantic fraud. Selfishness and oppression abound on all sides.

"The chief object in life seems to be that men should 'do' their neighbours. If they don't succeed their neighbours will 'do' them. I am one of those who 'do' their neighbours. I believe in 'doing' my neighbour, for it is but self-defence. There is no mode of punishment that can prevent me from doing these deeds. If I thought that by living a clean, honest, straightforward life I should be rewarded in the future, then I would do so. But there is no future, and one can, if he so chooses, live as he will. It matters not one atom, for when one is dead one is finished with. Death will never frighten me. I shall face it and will welcome it.

"My career might have been so different. What I am to-day you helped to make me. Ten years ago last Monday you sent me to prison for six months. During those six months I learnt more roguery than I have learnt before or since. During that time I determined to get my own back. I

have done my best to get my own back, and to do injury to others, and I think I have succeeded very well."

The prisoner went on to give his parents and family an excellent name, and said they were not responsible for his career of crime. He made some blasphemous observations, and said his parents used to worship "a mysterious being called God by a sort of wireless telegraphy," the only difference being that they got no replies. In conclusion, he said :—

"Punishment has never had any effect for good on me, only for evil. I am a moral and social wreck. It is nothing to me. I am used to it. From January 1901 to this date I have not had six months' liberty. I have been an inmate of two asylums, and this is the end. Twice I have attempted to take my life, and the next time I shall succeed. I have determined never to serve any sentence passed on me. You have contributed towards the ruin of my life. I declare before all people in this court that you cannot possibly acquit yourself of that. Now do what you like. If I liked I could murder the police officers and burn down the Co-operative Wholesale Society. I will track them down and lure them into false security, and cry, 'None can injure me with impunity.'"

The recorder passed a sentence of three years' penal servitude.

Now this man may be, and probably is, a very bad specimen of prisoner, but he is by no means a bad specimen, although singularly

outspoken, of the ordinary recidivist convict who puts similar doctrines constantly in force. He is proud of his calling, is clearly of the intelligent order, and he has evidently adopted the complete gospel of irresponsibility which an emotional humanitarianism considerately places at his disposal. He discards free-will and personal liability for his actions, airily shifting his sins to the shoulders of a harmless bench of magistrates who gave him six months' imprisonment ten years previously, although he was already a law-breaker when first he made their acquaintance. Some will say he is mad—a theory to which his history as given by himself lends some colour,—but his speech does not show any signs of mental deficiency, though it indicates a perversity of morals and disposition more consistent with badness. To impose some kind of effectual restraint on a criminal of this type who threatens suicide, homicide, and war on society in general, and even to compel him to keep his own company for a few months in separate confinement as carried out under the mild regulations of the English Prison System, though it may hurt the nervous susceptibilities of humanitarians, would nevertheless seem to be an absolute social necessity

founded on cold common sense, and on the primal instinct of self-preservation.

In connection with the reclamation of convicts, one of the most common criticisms made is that our system of penal servitude neither reforms the habits of the criminal, nor deters him from the commission of crime. It must be admitted that the statement, though it needs some qualification, is to a large extent true in so far as it concerns the *habitual class*, who return to prison undeterred, and unreformed, time after time in excessive numbers, and that the penal system has yet to be invented which will abolish recidivism in this class, or convert even a poor 50 per cent of persons who live by crime into law-abiding and respectable citizens. The inference that is commonly drawn from this ineffectiveness of our system in dealing with an incorrigible section — that the entire system is a signal failure—is fortunately disproved by the facts of the case. We know, for instance, that convicts were more than three times as numerous thirty years ago as they are at the present time, despite the increase of the general population; that they have now many more opportunities for committing crime than they enjoyed under

the long-sentence system; that many other persons besides habituals who are convicted of serious crimes are either reformed in habit or deterred from further criminal conduct by one sentence of penal servitude; and lastly, that a certain proportion of even recidivist convicts abandon their criminal careers every year. There is no reason to think, nor have I any desire to suggest, that our system has reached perfection or finality; but it is hardly conceivable that a candid investigator can fairly pronounce that system to be a failure under which these practical results have been achieved. With regard to those *non-habitual* offenders who commit serious crimes, we know that the Star Class of convicts who represent this section, although they constitute unfortunately but a small proportion of our convict population, shows a quite satisfactory record in regard to recidivism. Since this Star Class was established for convicts in 1879 up to the present time (1911) only 1.73 per cent of the men discharged have returned to penal servitude under fresh sentences, and only 1.42 per cent have had their licences revoked or forfeited. The other 98 per cent of this class have evidently proved susceptible either to the reformatory or

the deterrent influences of the system. During the period referred to the actual numbers of males placed in the Star Class were 3921, of whom 56 only returned to penal servitude; the number of females placed in the class was 170, of whom only one returned. So much for the non-habituals.

With regard to the recidivist class of convicts, of whom, as I have said, a small number drop their criminal habits and fall out of the ranks every year, Mr. Harold Begbie, in his recent book called *Broken Earthenware*, gives an illustrative series of conversions of hardened criminals which were brought about entirely through the religious influences of the Salvation Army. The living instances he gives of complete reformation of character and conduct in men already steeped to the lips in criminality of the worst kind, whose antecedents appeared to render them impossible subjects for reclamation, are certainly very remarkable. A brief life history of each of these chronic criminals is set forth under the following suggestive titles: "The Puncher," "A Tight Handful," "Old Born Drunk," "The Criminal Joe," "The Copper Basher," "The Lowest of the Low," "The Plumber," "Rags and Bones," and

"Apparent Failure." They paint themselves, or they are painted by the author, in lurid colours, practising in various departments of crime as thieves, burglars, drunkards, would-be murderers, etc. The value of the book itself as a contribution to the study of crime is considerably discounted, for those readers who are conversant with police and prison procedure, by the extravagant statements on these subjects made by the converts, and seemingly adopted by the author. We are told, for instance, that cowardly and brutal assaults by the police are things of constant occurrence; even the convert who earned for himself the suggestive sobriquet of the "Copper Basher" complains that he was "punched by the police," though he is described as heading a gang that "waylaid police and bashed them to unconsciousness." Again, it is stated that there are "precious few warders who do not do a bit of private trading on their own account"; "the great majority (I am told), either out of goodness of heart, or to add to their wages, smuggle in food and plug tobacco for the convicts." Another convert tells us, "never once did a prison chaplain visit his cell" —the author adding that "in this statement all the prisoners I have ever talked to bear him out."

Another says the Roman Catholic priest, to whom he applied to help him to go straight, "gave him not only no help, but no encouragement to desire a better life." The author's comment on these very doubtful stories is that "Christianity becomes as much a matter of routine as prison discipline when you put a man within a gaol as the official representative of religion." But allegations of this kind, and the hasty conclusions based on them, are surely more likely to appeal to fanatical than to level-headed people. They tend to impair rather than enhance the merits and credibility of the miraculous stories the converts have to tell of themselves, and, at the same time, to shake the confidence of readers in the critical acumen and judgment of the author who publishes them. The facts by themselves are convincing enough in regard to the reformation of conduct and character effected in accomplished criminals who were already far advanced on the road to perdition. All honour and merit, therefore, to the Salvation Army for succeeding where others failed in rescuing these apparently hopeless and impossible criminals. Tougher material for purposes of reclamation could only be supplied from a convict prison. But so impressed is

Mr. Begbie by these successes that he advises the State "to do away with the formality of prison chaplains, men who too often perform their perfunctory duties with little enthusiasm, and with little hope of achieving anything; and admit, under proper authority, some such organisation as the Salvation Army, which has in its ranks many men who have themselves suffered in prison, who know the criminal mind, and who would approach the most deplorable and hopeless case with the certain knowledge that conversion is possible."

This disparaging commentary on prison chaplains betrays an acquaintance with their efforts and varied work so imperfect as to constitute a serious disqualification in one who takes up the rôle of a prison reformer. The cause of reclamation is much more likely to lose than gain at the hands of persons who pronounce judgment on insufficient knowledge; and the remedies they suggest are generally, as in this case, impracticable and useless. In the course of my own varied experience of prisons and prisoners, I have seen nothing that would justify this general condemnation either of chaplains, Roman Catholic priests, or the clergy of the other denominations who look

after the spiritual and moral interests of their respective charges; but, on the contrary, I have witnessed kindliness, coupled with zeal and energy, shown by them to all sorts and conditions of offenders alike. The author's comments do not therefore appeal to me as they will probably do to more uninstructed readers. It is quite as unfair to assume (as is commonly done) that in the matter of reclaiming criminals all success is traceable to unofficial efforts, as it is unreasonable to imply that prison chaplains are unconscientious persons. They too can recount their victories with cases of apparently incurable criminality, where the efforts of other agencies would probably have been attended with less success. In the same way the numerous Aid Societies connected with prisons contribute their quota to the lists of cures. All these societies, including the Salvation Army, have access in prison to those whom they are willing to help on discharge. Prison authorities welcome them all, and fully appreciate the good work they accomplish, knowing, as they do, that there is ample scope for all the reformative agencies that can be brought to bear on prisoners. It is very probable, however, that still better results would be attained if the

various existing societies were better organised, with a view to more cordial co-operation in working, and less rivalry and competition in claiming results on which they can base their appeals to the public for funds.

A very interesting inquiry into the reclamation of recidivist convicts has lately been made by Mr. Basil Thomson, Secretary to the Prison Commissioners. Taking all the convicts who were discharged during the five years (1900-1904), amounting to 4563, he found that only 1386 of them have not been reconvicted. Of these 1386, or 30 per cent of the whole, 689 were first offenders, and 697 recidivists. An inquiry into the subsequent history of these recidivists shows that 308, or nearly half, were in regular employment, 53 were in casual employment, 59 had left the country, 153 could not be traced, 29 were in workhouses or asylums, 48 were dead, and 47 were known to be unsatisfactory. A summary of the subsequent lives of some of these reclaimed criminals shows successful struggling on their part against overwhelming odds. The general statistical result shown is that 17 per cent of these confirmed recidivists were reclaimed. Mr. Thomson says, " This may seem

a poor result to those who are personally unacquainted with convicts; but to those who know the quality of the material, the reformation of even one professional criminal is a remarkable achievement. In these cases of the reformation of apparently hardened criminals it would be hard to say how much was due to the deterrence of penal servitude and how much to the reformatory influences of the system; but in most cases probably both influences were at work."

It does not often happen that even one who has had a large circle of criminal acquaintances comes across a converted recidivist in daily life. The unconverted variety is much more obtrusive, and ready to claim acquaintance in London, and even to drink one's health if the funds are duly supplied; but I have personally met with a few instances of the former kind. At Euston one evening I caught sight of a man who was on the line between two carriages with a very grimy face, smiling, and saluting me so as to attract my attention. He was quite unrecognisable until he climbed up on to the platform in the light, when he made himself known, and told me proudly he was now going straight and honest

in the regular employment of the Company. He had been an inveterate recidivist, who was very often idle and ill-conducted in prison. I had always regarded him as a hopeless incorrigible; but here he was evidently reclaimed, and engaged in regular work—a veritable *rara avis*, and, in his working kit, *nigroque simillima cygno*.

CHAPTER V

ON RECLAMATION—*continued*

Reclamation of convicts under preventive detention—Cost—Prevention of Crime Act well weighed—Detention sound in principle—Convicts have already had much freedom since 1879—Mental and moral training—Co-operation of prisoner essential—Education by correspondence, lectures, concerts—All sentences cannot be reformatory—Penal effects depend on temperament—Field for reformation restricted—Statistics on criminality of local prisoners and convicts—Time required to reform—Work of chaplains—Special attention given to first offenders—Separate confinement suitable for them—Separation period for convicts—Recreation—Different standards — Concerts — Lectures — Straight talks—Religious and moral influences—Education—Library books—Physical culture—Productive work.

I HAVE dealt at considerable length with the reclamation of *convicts* specially, because this has always been the most difficult and least successful, while it will soon become the largest and most important, branch of the work. The class concerned stands for the worst kinds of criminality, and includes those who commit the most serious offences, possibly occasional, as well as those in whom the crime habit is the special feature which renders them obdurate

to the efforts of moral reformers. Recent legislation in the interests of inebriates, young persons, and juvenile-adults up to the age of twenty-one; and forthcoming legislation recommended by committees, in the interests of weak-minded prisoners and vagrants, will have the effect of narrowing the field of reclamation in the local prisons to comparatively small dimensions. But reclamation for convicts will soon enter on a new phase under the Prevention of Crime Act of 1908, which provides for the preventive detention of convicts who are declared "habitual criminals." Under conditions less rigorous and penal than those of the ordinary penal servitude sentence, these offenders will be detained, after they have completed a term of ordinary penal servitude, for periods of not less than five, or not more than ten years, or until they have acquired habits of industry and self-control, so as to satisfy the authorities that they can safely be released on conditional licence with a fair prospect of taking up some honest employment. Supreme efforts will be put forth to make some real and lasting impression on their habits and character. It is expected that a much larger proportion of them will be rescued under the more favour-

able circumstances of longer time and less penal restriction. At the same time the prospect of becoming "an habitual under the Act" ought to exercise a very deterrent effect on those who incline to a criminal career, while the public will enjoy incidentally more immunity from the predatory inroads of a very troublesome class. But the initial cost to the community will still be considerable. Reformatory work, like other kinds of education and training, cannot be run on the cheap if it is to be really good and effective, more especially where *men* are concerned who have to try and unlearn a whole code of immorality on which they have, from their youth up, regulated their lives and fortunes. "Sow an action, reap a habit; sow a habit, reap a character; sow a character, reap a destiny." This is their condition for the most part. English prison administrators, in the grip of an exacting treasury, are in a much less favourable position for embarking on missionary enterprise than the authorities of the State reformatories in America, who can spend magnificently, and who constantly scrap machinery, manufactured articles, and made-up materials, in deference to labour laws which prohibit the

sale of prison-made goods. They are not likely, therefore, to make experiments of the wild-cat order, or to erect palaces where workshops are required; nevertheless they will need more than garden-tools to equip, and carry on the work of, the institution that is now being built at Parkhurst, if they are to instil the work habit, and to avail themselves to the full of the many and varied aptitudes possessed by their pupils, whose willing co-operation in the means adopted for their regeneration is absolutely essential to the success of the scheme. It is somewhat unfortunate that the present Home Secretary,[1] if we can judge from his published speech in the House of Commons in July 1910, and from his subsequent release of the historic shepherd of Dartmoor—a typical recidivist and one of the first batch destined for the new treatment,—does not appear to think well of preventive detention, which is merely a modified form of the indeterminate sentence that has gained so much favour and support in the United States. Prison authorities have long advocated this kind of sentence for habitual offenders. The Prevention of Crime Act,

[1] Mr. Winston Churchill, succeeded by Mr. M'Kenna in October 1911.

which provides for carrying the plan into effect, was carefully considered, and fully debated in Parliament: it is to be hoped, therefore, that the intentions of the Act will not be administered away before it has had a fair chance of showing its usefulness, since even a moderate degree of success in the working of the measure must prove remunerative both in a social and economic sense, and bring some overdue relief to a long-suffering public. Up to the present time, the only judicial expedient which can lay claim to any success in dealing with recidivism has been the indeterminate sentence. The watered-down edition of it which we have adopted in preventive detention is an experiment which, in the opinion of our prison authorities, promises better results than any other at present in the field. To strangle it at its birth would seem, therefore, to be a fatuous and retrograde policy.

But the excessive and illogical tenderness shown by our legislators for the liberty of the subject, no matter how unworthy this person may be, is a force with which prison reformers have constantly to reckon. We do not hesitate to detain preventively in the public interest unfortunate persons who may be suffering

from smallpox or scarlet fever, or demented people who may be harmless to the community, or inebriates who are really the victims of disease; so that it seems a very chivalrous exercise of benevolence on our part to reserve our sympathy specially for persistent criminals who are a constant danger to society, and who, moreover, have already enjoyed tentatively since 1879 (when penal sentences were shortened on a very liberal scale) considerable extensions of freedom which they have failed to turn to good account. This latter fact is very commonly forgotten or ignored. No responsible authority in the present day advocates a return to the long sentences of forty years ago which were almost entirely penal in character; but, if the evils of recidivism are to be resolutely dealt with, detention for a reformatory purpose, with training appropriate to his needs, becomes a necessity for the prisoner if he is to be reclaimed at all, or if he is to have a chance of demonstrating his fitness for a law-abiding life. Lord Gladstone, who introduced the Prevention of Crime Bill, was fully aware of all these considerations. He had had unique opportunities for studying the subject in its

theoretical and practical aspects, in the first instance as Chairman of the Departmental Committee on Prisons in 1894, and subsequently as Home Secretary in the administration of 1906. His studies led him to the conclusion that stringent measures were necessary for limiting the activities of habitual criminals who, although they were steadily diminishing in numbers, were still able to commit an excessive number of crimes owing to the freedom they enjoyed under the short-sentence system. The Bill was intended to meet these difficulties, and it was presented in two parts. Part I. was designed to stop the manufacture of habituals by placing *youths* of criminal habit or tendency in Borstal institutions to be rescued from crime and trained in habits of industry. Part II., on the other hand, was aimed at the *finished* habitual, and the original intention of the Bill was to subject him to an indeterminate sentence which was the only effective means then known for reclaiming this class. Parliament, however, refused to place this weapon unreservedly in the hands of the prison authorities, and the compromise of preventive detention was the result. This brief account of the actual state

of affairs which led up to the passing of the Act is of some importance in view of the tendency which is already being shown to disparage preventive detention as "penal servitude in disguise" before it has been tried. Part I. of the Act is already working wonders with incipient habituals; and, although we cannot reasonably look for reformatory results on a similar scale with habitual criminals of mature years, there are fair grounds for expecting that Part II. also will contribute largely to the repression of crime.

The course of mental, moral, and industrial training for these pupils under preventive detention will include some special features suited to their requirements, and will, of necessity, involve much individual attention being given to each prisoner. The success of the scheme will depend largely on the extent to which the prisoner's own sympathies can be enlisted in the work. With regard to the scheme itself it will be much easier to define the objects to be aimed at than the means by which these objects are to be attained. To train the prisoners to habits of steady work at some interesting and useful form of industry which will enable them to become honest

wage-earners; to teach them self-control and self-reliance, so that they will never forget that their destinies are in their own hands; and to instil into them some moral principles which will enable them to carry out their good resolutions,—these are the main objects. But the best means for their accomplishment are more likely to be evolved from experience than settled beforehand by any cast-iron system of treatment. The experiences of the Elmira authorities can be drawn on for such expedients as may be suited to the new conditions of detention, and to the national characteristics of our habitual criminal class. Already the Prison Commissioners are trying the experiment of educating convicts by correspondence and telephone, so that a prisoner in his cell may have the opportunity of improving himself if he is so inclined. The Home Secretary also promises a grant from the Treasury for the organisation of lectures and musical entertainments, as subsidiary aids to reclamation, on a scale more regular than has been possible hitherto under voluntary effort. Whether it has become necessary for the State to undertake this fresh responsibility of providing amusement as well as instruction for criminals

is a question which is exercising the minds of many persons who favour the non-criminal portion of society. They contend, not without some force of reason, that such musical entertainments constitute a form of recreation which might very well have been left to charitable effort, and that those benevolent reformers who have called the tune should undertake the usual obligation of paying the piper, without dipping into the pockets of the tax-payer. The sum of money, however, which will be allotted for the purpose will be insignificant, except for the principle involved, and whatever recreation is provided must be considered in the light of means to the end of bringing the prisoners into a more receptive frame of mind for benefiting by instruction. The Prison Commissioners will probably pass in review many expedients suggested for reclaiming habituals, and it may be confidently expected that any measure which has met with success at home or abroad will receive a fair trial at the hands of those who are so interested in the working of the preventive detention scheme.

Although it is the aim of many prison reformers at the present time to make every sentence of imprisonment purely reformatory

in effect, this beneficent ideal is in the nature of things impracticable. The penal or non-penal effect of a sentence depends much more on the habits and temperament of the prisoner than on the conditions of prison life, or the intentions of those who frame the rules and regulations. A tramp who is in the habit of sleeping in a shed is not really *punished* by a short sojourn in a warm, comfortable prison cell; while a novice, who lives in comfort outside, may experience misery in mind and body by even a short detention. But apart from this general consideration, the field for reformatory effort amongst prisoners is much more restricted than many reformers imagine. Local prisoners are six times as numerous as convicts; but the sentences of the great majority of them are so short that, in the absence of instantaneous conversion, very little can be accomplished in prison. Many of the offences committed are of a very trifling character, so that the criminality of local prisoners bears to that of convicts somewhat the same relation as naughtiness does to wickedness. Assuming that length of sentence bears some general proportion to criminality, we find that the average sentence of the former class in 1910

was 33 *days*, while that of the latter was 4.8 *years*. But a further analysis of the local prison population shows that it is only a very small proportion of the whole that can be brought under reformatory influences for any period of time that would be adequate for effecting reformation of habits and character in persons of real depravity. Of those sentenced to imprisonment in 1910 no less than 35.5 per cent were sent to prison for one week or less, 61.5 per cent for two weeks or less, and 95 per cent for three months or less; while only 3.7 per cent were sentenced to six months and over, and only .5 per cent to more than a year.

While these figures illustrate in a striking manner the small amount of serious crime represented by the local prison population as a whole, they serve to show also the comparatively limited scope existing in local prisons for brilliant reformatory achievements. If, therefore, offenders are to be sent to local prisons with a view to having their characters reformed, it is obvious that the courts will have to inflict much longer sentences. A year at least is required by the authorities of the Borstal institutions for effecting any good results with youths of 16 to 21 years of age,

and a still longer period might be necessary for local prisoners of mature years; but public sentiment would be outraged by the infliction of such sentences for minor kinds of crime, even if the necessary place of detention were designated a moral sanatorium instead of a prison. So jealously is the liberty of the subject guarded in these questions of detention, no matter what the object may be, that the courts hesitate to detain inebriates for the full term of three years, although this course may be the only way of safety; or to sentence juvenile-adults to the full period of three years in a Borstal institution, although they are fully aware that liberation on licence can be obtained by good conduct long before the sentence expires; while Parliament absolutely refuses to commit for indeterminate periods even habitual law-breakers of the most flagrant criminal antecedents, although they too can earn conditional freedom by showing their fitness for release.

If prisons, then, are to be conducted on purely reformatory principles it is obvious that sentences must be extended, or the whole time of the prisoner must be spent in improving himself or being improved by his mentors. The late Sir Edmund Du Cane, who was the

first chairman of the Prison Commissioners in 1878, has given us an account of a prison which was managed on these lines under a local authority before the prisons came under State control. No work was provided for the inmates, but they were supposed to occupy their whole time in self-improvement. The establishment was largely patronised by an idle class, and it came to be known as "Reading-Reading-Reading-Gaol." One of the habitués accounted for his appearance with a fresh sentence by saying he had returned to finish his Bible, the reading of which he had been unable to complete in his last sentence! The whole institution reeked of idleness, and it was pervaded with an air of indifference and indiscipline, so as to present a spectacle of the demoralisation that can be attained when the genial and imaginative faddist puts his hand to the prosaic business of prison administration.

It must not be inferred, however, that all reformatory effort is either useless or unfruitful among the minor delinquents of the local prison population. This is far from being a correct view of the case. Chaplains can tell of large numbers of prisoners — not only occasional offenders but recidivists — who have been

influenced by their timely advice and assistance to form good resolutions in prison, and keep them resolutely after release, so as to become eventually honest members of society. In many instances where sentences are very short little can be done beyond gaining some of the prisoner's confidence, and sowing the seed, but, through their intimate connection with all the Discharged Prisoners' Aid Societies, chaplains are enabled to keep in touch with the promising cases after their discharge. In this way an enormous amount of good is accomplished extra-murally every year, as the records of the various Aid Societies show. Only those who are conversant with the ordinary routine of a local prison can appreciate the difficulties under which chaplains deal with short-sentence offenders. In large prisons they arrive in shoals—a reception of a hundred prisoners a day being nothing unusual—and they go out in shoals also, so that the prison becomes a thoroughfare. A very short interview with each incomer and outgoer under these circumstances obviously makes a large draft on the time available to chaplains for their work under the routine of the establishment. That any rescue work at all should be accomplished

among short-sentence prisoners under these conditions, while they are in custody, is surprising; but chaplains can, and do, keep a hold on those who wish to reform through the Aid Societies, and they are enabled in this way to render their efforts at rescue more persistent and continuous. First offenders receive special attention at all prisons. A large proportion of them never return, and are not really criminal in character, but are probably drawn from that large section of the community which, though it may be blind and deaf to a clear warning, is nevertheless capable of profiting by a short and sharp lesson. The obvious inexperience of many of these first offenders, and their first impressions of the disagreeable incongruity of their surroundings in a prison, render them easy subjects for rescue; but special care has to be taken to segregate them at once, in order that they may not be exposed to the degrading and corrupting companionship of old offenders, or become familiarised with the less disagreeable features of prison life, so as to acquire a feeling of contempt for its penal and deterrent influence. For such novices all responsible authorities agree in thinking that the system

of separate confinement, which playwrights and sentimentalists denounce so freely, is a merciful and appropriate form of treatment, which is as rational in principle as the "rest and quiet" which any doctor would prescribe for a patient who had recently undergone a nerve storm, or some special attack of mental excitement.

We hear much of the inhumanity of prison treatment, and of the manufacture of criminals that goes on in prisons; but to thrust an accidental or occasional offender of any respectable antecedents into unwelcome and demoralising companionship is surely an unwise and inhumane proceeding; and it is doubtful whether a better method could be devised for propagating crime. If separate confinement were really equivalent to *solitary* confinement, or if it bore any resemblance to solitude in a dungeon, as it is generally depicted by persons who have no accurate knowledge of the system, there would be abundant reason for condemning it, but the analogy is as false in fact as it is in sentiment, and the wildest flights of fancy are indulged in to magnify the evils, only recently discovered, of a system which has been in force

England for the best part of a century, which is the basic ideal of prison administration in every civilised country in the world. After making all due allowance for the fact that the character of our criminal classes has altered materially for the better—that they are no longer so ignorant, savage, or untamable as they were thirty or forty years ago—and after admitting that it is politic as well as humane to meet this improvement with generous relaxations of severity, the conclusion is still forced on us that the separate system is a valuable piece of machinery which has served us so well in the past that it should not be lightly discarded, and that the whittling down of its provisions to vanishing point, with a view to making prison life more sociable and congenial, under the influence of a passing wave of sentimentalism, is a very misguided and inept policy, more especially at a time when there is clear evidence of the recrudescence of serious crimes against property, and of a coincident spread of a socialistic gospel of greed, which is of sinister significance to all students of criminology.

For the worst class of habitual criminals in convict prisons, in whom the gregarious

instinct is always strongly marked, and to whom the period of separate confinement is probably the most deterrent feature of a penal sentence, the reduction of this period has already reached a point which, in the opinion of many experts, is hardly compatible with safety. But the swing of the pendulum on this subject is inexplicable. When the system of a period of separate confinement for convicts at the beginning of their sentences was originally introduced, it was specially intended to be a *reformatory* measure by which a prisoner was to be screened from contaminating influences and companions, and to be secluded under conditions that would afford him opportunity for reflection, and for receiving exhortation, without detriment to his mental or bodily health. At present it is regarded as a deterrent measure, and to many humanitarian reformers it has become a bogey. As to its alleged injurious effects on the prisoners themselves, it may not be irrelevant for me to state that in my own long experience of English prisons I had special opportunities for observing these effects, not as an ordinary spectator, but as one whose interest was quickened by the responsibility of having to

safeguard the mental and bodily health of those who were subjected to the system: and I can safely say that the instances in which I found it necessary to recommend exemption were extremely rare; that I never witnessed any of the dire results which are said to happen now; and that the dramatic delineations of separate confinement presented to us lately are a complete revelation to me.

Various kinds of recreation and pastime, designed to improve the minds and elevate the feelings of prisoners, are tried from time to time in different countries, as incentives to good conduct and reformation of character. Some of these expedients, although possibly attended with some measure of success in their particular country of origin, are for several reasons ill-adapted to our national requirements. Card-playing, cinematograph representations of prize-fights, roulette, Aunt Sally, etc., do not quite conform to our possibly strait-laced moral standard as being elevating features in a prison system. The moral sense of the public, or what is often conveniently alluded to as the Nonconformist conscience, would probably be scandalised by the adoption of these exotic devices. Similarly

the running of candy-stalls by prisoners, unlimited smoking and chewing of tobacco, familiarity with officers, indiscriminate association, and other proceedings tending to loose discipline, do not fit in with our ideas of things as they should be, nor do they harmonise with our national sentiment—a factor which is of much more importance than is generally supposed in determining our methods of correction. How very sensitive national sentiment may be on such a question as the liberty of the subject we have already seen in the case of the Prevention of Crime Bill of 1908, when Parliament absolutely declined to accept the indeterminate sentence even at the hands of one of the most humane Home Secretaries. Both the penal measures and the methods of reforming criminals, which may be effective in one country, are as likely as not to prove absolute failures in another, owing to differences in national character and temperament. Administrators, therefore, who are seeking for recreative aids to reformation of character, have their range of choice in this country somewhat circumscribed by these considerations. The latest expedients suggested are musical entertainments and lectures; but these are not

novelties, since they have been tried in our prisons for several years past. In 1910, the Chaplain-Inspector reports, 1133 secular lectures were given to the juvenile-adults, 257 to female prisoners, and 51 to the general body of prisoners. Further, no less than 285 lecturers, outside the prison staff, volunteered their services, so that this branch of work seems capable of infinite development. Besides, many bishops, dignitaries of the Church, and other clergy have preached to prisoners, the chaplains of the prisons generally securing the help of the ablest preachers that their districts can supply. In the same way musical entertainments, chiefly of a religious character, have been given in several prisons for years with much apparent benefit. The chaplain of Portland Prison gives an account (in his annual report 1910) of a performance of Handel's "Hallelujah Chorus" and other pieces by the band of the Somerset Light Infantry in his prison. He says the prisoners were deeply moved by it, and that "the moral effect was invaluable"; and he adds that "in his opinion it was much more powerful and universal in its operation than any lecture could be. A lecturer, however clever, however popular, only appeals at

best to a percentage of a prison audience. There will always be a considerable number of individuals too ignorant, too indifferent, or too uninterested in the subject, to profit by it, or even to enjoy it; but good music appeals to all in at least some degree. . . . When one thinks of the callous indifference to better things so often met with amongst prisoners, one cannot help being profoundly grateful for anything that can so deeply move them."

Although this statement may require some slight qualification—since there is a considerable number of individuals in the general population, and probably a larger proportion in the criminal class, who are not moved by concord of sweet sounds,—yet the numbers in a prison audience likely to be favourably affected by good music are probably in excess of those who would be similarly influenced by a good lecture. In the former case, however, the susceptibles would be led to think in an emotional, while in the latter they would be led to think more in an intellectual spirit. We are not, as a rule, a lecture-loving people. The average lecture, on abstract subjects especially, may be made intensely dull, and it is a rare experience in the present day to meet a lecturer

who has the personal gift of holding the attention of a mixed audience for even an hour. "Straight talks" with prisoners for even five or ten minutes are a most effective means for "getting at" them; and if they take the form of dialogue in which the prisoner has an opportunity of airing his views, and exercising his dialectical skill, no better or more improving form of mental exercise can be imagined. Talks under such conditions are twice blessed, and tend not only to the improvement and instruction of the prisoner, but also to the enlightenment of his mentor on the abstruse subject of the criminal's code of ethics and his psychology. Even if the six imaginary persons who have been said to be present at every dialogue were represented thus:

1. The real criminal known only to his Maker;

2. The criminal's ideal criminal; never the real one and often very unlike him;

3. The mentor's ideal criminal; never the real criminal, nor the criminal's criminal, but often very unlike either;

4. The real mentor;

5. The mentor's ideal mentor;

6. The criminal's ideal mentor;—

they would still constitute a mutual improvement society: the criminal would gain wisdom, knowledge, and moral enlightenment, while the mentor would get side-lights on the psychology of his pupil which would help him in diagnosis, and dispel illusions as to the efficacy of mere empirical remedies in the treatment of criminality.

Religious and moral influences must always take the first place in any rational scheme for the reformation of criminal character. Through them alone can be acquired that *moral sense* which is wanting in persons of criminal habit, and is nevertheless a fundamental requisite for mankind in every relation of life. It is perhaps conceivable that a criminal may be *reclaimed* by fear of punishment, or by motives of expediency; but he cannot be genuinely *reformed* without an awakening of conscience, or without the acquisition of some degree of moral sense. As this latter kind of conversion is the best cure, being radical in its conception and permanent in its operation, it is the ideal objective in a sound system of criminal therapeutics.

But even if a criminal cannot be taught to do a thing because it is right, he may appreciate

the necessity of doing it because it is expedient. Education, which makes him think, is very useful in this direction, while it tends also to stimulate conscience and arouse moral susceptibility. To find some legitimate subject in which he can take an interest is generally the best way to guide his thoughts in a right direction. Let him choose his own library book. The selection of such a book for one's most intimate friend is often a disappointing business; but when the prison schoolmaster chooses, as he has to do at times when a prisoner is absent from his cell, the result is often ludicrous. I remember an instance of the kind. The prisoner, a light-fingered practitioner of easy-going temperament, who took what he called a "Hell Pee" (L.P. or local prison) sentence as "all in the day's work," was a clever and ingenious fitter who could always have found a place in the free mart outside but for his little failing. The schoolmaster left a book for him which happened to be Smiles on *Self-Help*. He told me he could not read it, though it dealt with the heroes of many mechanical inventions. It was not the "blokes" but the "machines" that interested him. He also added with a

twinkle that it was "Self-Help brought him here."

Another prisoner would not read his book because it was not about animals, so he drew pictures on his slate. He showed the chaplain one day a duck and a donkey to which apparently he attached some allegorical or symbolical meaning. When the chaplain asked for the explanation he said, pointing to the donkey, "that's me," and to the duck, "that's missus."

All education, other than the three R's, should follow as closely as possible the particular bent of the pupil. Children and young persons have now been practically excluded from prison, and it is sheer waste of time to try to interest an adult criminal in a subject if he has no ear for the music of it.

But these moral and intellectual agencies for the reformation of character must be supplemented by measures for promoting the physical efficiency of prisoners, such as good hygiene, and drill or exercises suited to their capacity; and lastly by employment at some useful kind of productive work—an agency which makes at the same time for the mental, moral, and industrial rehabilitation of all who

come under its influence. For the purposes of reformation, morality, education, and labour are the three essential components of a sound criminal curriculum. All three are interdependent, and whether the criminal is to be reclaimed from evil courses, or actually reformed in character, it will be found that each of them tends to promote the main object of fitting him for a return to honest life.

CHAPTER VI

ON THE INTERNATIONAL PENITENTIARY CONGRESS 1910

The indeterminate sentence—Statistics of crime in United States not available—Principle of the sentence approved, but its application restricted—It is generous rather than just—Fixed penalties seem indispensable—Right to earn remission—Criminals migratory in habit—United States not very suitable ground for testing the sentence—Decisions of Congress on it—Substitutes for imprisonment—Defaulters' drill—The "suspended" sentence—Suitable for many first offenders—Probation should accompany it—Not a success in Europe—Unsuitable for worst criminals—Police should not supervise—Decisions of Congress on it—Separate System—Borstal System—Retributive principle adopted—English Prison System commended—County and city gaols in America—State Reformatories—Neglect of minor offenders—Causes—Criticism necessary to form sound public opinion—Difficulties—Opinion lenient to crime—Indeterminate sentence double-edged—Next Congress 1915.

At the Eighth International Penitentiary Congress held at Washington in October 1910, many interesting questions in connection with the punishment, prevention, and general treatment of crime were discussed. A Report to the Secretary of State for the Home Department on the proceedings of the Congress, by Sir E. Ruggles-Brise, K.C.B., was recently

laid before Parliament by command of His Majesty. In it Sir E. Ruggles-Brise—President and British Representative, International Prison Commission—gives a brief summary of the transactions, with some general observations concerning the more leading features of the Congress, and reflections suggested by the institutions visited by the 81 delegates representing 34 States; the discussions that took place in Congress; the various opinions submitted in speech and writing, and impressions gathered in conversation with many leading men interested, officially and unofficially, in the treatment of crime in different parts of the world: there is also a short summary of the questions submitted for discussion at Congress, and the resolutions taken with regard to them.

The question of the indeterminate sentence, on which the United States delegates mainly rely as *the* specific for the cure of crime as a kind of social disease, naturally took a very leading part in the proceedings, and overshadowed to a large extent the other subjects that were brought forward for consideration. The principle involved in it met with general acceptance; but the application of it gave rise to some differences of opinion amongst the

European delegates, which were reflected in the resolutions finally adopted. Foreign delegates were influenced in their opinions by the absence of any statistics, that could be considered satisfactory, in regard to the movement of crime in the United States. Strange to say, the country as a whole has no statistical data specially relating to crime, and the scanty figures available in the census returns point to a considerable increase of the crime of the country, so that mathematical tests cannot be applied to much of the experimental treatment that is going on. Some of these experiments are of a very daring character to European eyes. The law of Indiana, for instance, allows the sterilisation of confirmed criminals and "defectives." On the subject of the indeterminate sentence, Sir E. Ruggles-Brise has some very pertinent comment:—

> Its meaning is to deprecate what is known as the "retributory" element in the punishment of crime, *i.e.* to take away from the judge the power to inflict a definite sentence for a definite offence; to make, not the guilt of the offender, but his potentiality of reform, the index of the duration of punishment; to confer on executive officers, *i.e.* boards of parole, who become cognisant *after conviction* of the character of the criminal, the power to say at what

moment he can be released without danger to the community. This rejection of the "time" or "definite" sentence, as the penalty for anti-social conduct, has a much more than juristic interest. It is a great deal more than a change of criminal procedure. It is a new mental attitude towards the conception of punishment on the part of a large section of the English-speaking race. We may account for it partly by a distrust of the judiciary, which has not the strength, or character, or tradition which belongs to it in Europe, partly by a reaction against the startling want of uniformity in the criminal codes of the different States of the Union, whence arises an inequality of punishment which cannot fail to strike the imagination of a race which, in its quick-march towards progressive ideas, takes an almost childish pleasure in defying tradition; and this especially in the domain of the criminal law. . . . It may be a bold generalisation to say that the civic spirit has become the religion of America, but the idea of recreating criminal man to honest citizenship—this, rather than his conversion into a religious man—lies at the root of the modern doctrine of reformation as the primary object of punishment. . . . No one can quarrel with this lofty concept of punishment, but the cautious and the thoughtful man will ask himself whether principles which are of more importance for the well-being of the community are not being sacrificed for an ideal which must be in many cases unattainable, and, in all, extremely difficult. You cannot expel human nature with a fork, and moral indignation against the perpetrator of an anti-social act is in human nature, and will demand certainty and fixity of punishment

where there is full responsibility for the deed. It is a misnomer and a fallacy to refer to this healthy moral sentiment as a desire for vengeance, or as the old classical idea of expiation. In its modern shape it merely expresses the determination of the human consciousness that the system of rights should be maintained, and that the person who violates it should be punished. The character and degree of that punishment will be the result of experience in each country, according to racial characteristics, the standard of civilisation, and the degree of intimidation necessary to deter from breaches of the law. . . . What is new and startling in the system to English ideas is that the judge should not fix the sentence, and that the Parole Board should liberate without reference to superior authority. . . . It is applied *passim* to inmates of State Reformatories, *i.e.* persons under thirty or thirty-five guilty of grave crime, subject to the condition that they are not known to have been previously convicted of felony. In some States it is applied to the ordinary State prisoners, *i.e.* persons guilty of grave crime of all ages, whatever their previous record may be.

The *principle* of the indeterminate sentence, which was peremptorily rejected by the Brussels Congress of 1900, finds much more favour in Europe now, and it was strongly advocated by French, German, Austrian, and Belgian delegates at the present Congress, while we ourselves have already adopted it in our preventive detention system for criminals

of the professional class. The indeterminate sentence, however, is a form of treatment which has its limitations, and it is by no means the panacea which American opinion, on very inadequate evidence, claims it to be. It is pre-eminently a remedy in regard to which everything depends on the method of application. So far as the principles of punishment are concerned, it must be regarded as a generous, rather than a just, expedient for dealing with responsible criminals of mature years who are convicted of serious offences. The generosity of the measure, moreover, is in its practical application much more conspicuous in the case of the least deserving, that is to say, the really criminally inclined person, than in that of the occasional or accidental offender who deserves much more consideration and sympathy. I have known many criminals who have been guilty of very serious offences, such as embezzlement, grievous bodily harm, manslaughter, etc., who were so unlikely to repeat their offences that any ordinary board of parole might release them on the morning after their reception in prison with much more confidence than they could recommend the discharge, at the end of twelve months, of a burglar, housebreaker, or

pickpocket who had never been known to have been previously convicted of crime. Generosity to the latter class of offenders is widely extended in the United States, and it is of necessity frequently misplaced; while the former class must, for appearance' sake, be detained much longer than the actual exigencies of social safety demand. But the instant release of any one guilty of really serious crime would be a dangerous precedent even in cases where the offence was obviously committed by a person of non-criminal habit under the influence of anger, or jealousy, or some sudden impulse. This consideration, with the practical bearing it has on the treatment of crime in the interests of the community, throws some doubt on the all-round justice and wisdom of the indeterminate sentence as a remedy of universal application, and it emphasises the expediency of a fixed penalty being attached to crimes of greater magnitude in the first instance by skilled and responsible judicial authorities who have an opportunity of investigating the whole circumstances of the crime and the criminal at the trial. A fixed penalty, however, in the sense of a definite length of sentence, should not interfere with the prisoner's right (as enjoyed

under English law) of earning remission of a pre-arranged proportion of the sentence by industry and good conduct, since this privilege enables him to *help himself* by lightening his suffering, and encourages him to co-operate with the prison authorities in working out his own salvation—an object which is much more likely to be attained, and attended with lasting results, if he has himself had a hand in it, than if he has been hurriedly pushed or carried over the stile, only to find on the other side that he does not know where he is, or which of two ways to take.

In a country so rich and vast as the United States, made up of a congeries of States, each of which has its own system of legal, police, and prison regulations, with a busy and active population supplied with unrivalled means of communication between one State and another, all the conditions exist for rendering the more serious type of criminal a person of very migratory habits. Whatever the merits of the indeterminate sentence may ultimately prove to be, it is certain that the United States, in its present circumstances, is not an ideal or favourable ground for testing this experiment, since the tracing of the subsequent careers of those criminals who have been subjected to it is a

work of almost impossible difficulty. So far as the authorities know, it has been attended with considerable success; but accurate testing is still needed to establish the degree of failure also. When the people of America fix their minds on obtaining a complete set of criminal statistics for the whole country, and "come up against" the facts therein contained in regard to the indeterminate sentence, there can be no doubt that, if they find the system a failure, or only a partial success, they will unhesitatingly scrap it, or such parts of it as they may find unserviceable, just as they would deal with a piece of machinery which is not up to date.

The Report tells us that the final decision of the Congress on the question was in the following words:—

> The Congress approves the scientific principle of the "Indeterminate Sentence." "The Indeterminate Sentence" should be applied to moral and to mental "defectives." It should be applied also as an important part of the reformatory system to criminals who require reformation, and whose delinquencies are due chiefly to circumstances of an individual character. The introduction of the system should be conditioned as follows:—
>
> (1) That the prevailing notions of guilt and punishment are compatible with the principle of the indeterminate sentence.

(2) That an individualised treatment of the offender be assured.

(3) That the Board of Parole be so constituted as to exclude all outside influences, and should consist of a commission on which would serve one representative of the magistracy, of the prison administration, and of medical science respectively.

(4) That it is advisable to inflict the maximum penalty only in cases where it may be necessary, either on account of the novelty of the experiment or a lack of experience.

I have already, in a former chapter, adverted to the fact that there exists on the part of many social reformers who are interested in penology a keen desire to discover a *penalty that will not punish*, or some alternative to the existing unsatisfactory expedient of ostracising the offender and shutting him up in prison. It is contended, not without reason, that the system, hitherto chiefly employed for this purpose, of inflicting fines as an alternative to imprisonment, presses with undue severity on the poor, while it sits lightly on the rich; that incarceration *per se* is an unnatural punishment for a human being; that it is bad in principle and unequal in practice; that it penalises many innocent persons dependent on the offender; and that, in an economic sense, it is a foolish proceeding which imposes very heavy charges

on the State, checks industrial activity, and—worst of all—lays a permanent disqualification, in the shape of the prison brand, on those who are desirous of returning to honest employment. Every one of these objections is in theory irrefutable. The difficulty of dealing with them on any logical principle, or in accordance with the tolerant spirit of the times, is a measure of the impotence of civilisation to solve the many problems created for us by criminals; and yet the really satisfactory alternatives to a sentence of imprisonment are but few in number. The practice of the graver kinds of crime, more especially if it has become a habit, necessitates seclusion of the offender as a primary condition in the interests of the community, so that "alternatives" become more limited in number and application as the gravity of the offence increases. For offences of a minor character, however, the substitutes for imprisonment can often be employed with much advantage. One of the latest of these suggested by the late Home Secretary, Mr. Winston Churchill, is defaulter's drill. If the young persons who affect a criminal career can be brought under its influence in time, it may save many from becoming familiar with

the inside of a prison. At the same time it must be remembered that the effective scope of a measure of this kind is necessarily limited by the difficulty of applying penal or disciplinary treatment to persons of nomadic habits, and allowing them at the same time to continue their ordinary work. Defaulter's drill for a restless and generally ill-fed class who are not in actual custody will present many difficulties to the police or other authorities who may be called on to carry it out; but, if it can be utilised in suitable cases, it may serve the very desirable purpose of keeping people out of prison—an object that is worth much preventive effort.

Among the substitutes for imprisonment discussed at the Washington Congress the "suspended sentence" came in for a large share of attention on the part of both the American and European delegates. Statistics were given illustrating the working of the suspended sentence in the countries in which it has been tried, with and without an accompanying probation system, together with the views and opinions of those who spoke on theoretical as well as practical grounds. This particular development of penology is practi-

cally unknown to us in England. The nearest approach to it that we have is the principle contained in the recent regulation, which is now in course of adoption, whereby a person guilty of some minor offence is allowed time to pay his fine. In the latter case the guilty person pays the penalty eventually; but in case of the suspended sentence the penalty, which is held over *in terrorem*, may never be paid if the convict either fulfils the conditions imposed on him, or succeeds in evading the supervision of the authorities. We are familiar with the *deferred* form of sentence embodied in the Probation Act, and with the customary order that a prisoner should enter into recognizances to come up for judgment if called upon; but the actual suspension of the *execution* of a sentence of imprisonment is not yet provided for in our criminal jurisprudence. We are, however, moving in that direction, and we may confidently expect that the suspended sentence will prove ere long, in suitable cases and under suitable conditions, a very valuable addition to our resources in penology. Experience, as we shall see, is rapidly determining what these conditions should be in practice. We know already from our own statistics that

out of every hundred persons who come to prison for the first time seventy never return. For very many of these persons the suspended sentence would be an obviously appropriate form of treatment from which the highest hopes of success might reasonably be entertained. If they could be excluded from prison altogether, the gain accruing to the community by the saving of the enormous sums now spent in bringing them to justice, and by sparing them the crippling disqualification of the prison brand, would be in the nature of a highly remunerative investment both in an economic and a social point of view. The experiment, therefore, is well worth a trial. In regard to it Sir E. Ruggles-Brise says :—

I do not see how a system of suspension can be made really effective as a substitute for imprisonment without an auxiliary system of strictly organised and methodical supervision, but suspension allied to State or police probation is, I believe, a good and workable plan, especially in England, where the admirable *personnel* of the police force furnishes a sufficient guarantee that delicate and difficult duties will be wisely and tactfully discharged. Of all the tendencies and developments in the treatment of crime in America at the present day, this seems to me the most hopeful for the future, for the American is as deeply impressed as we are with the

civic, moral, and industrial injury which results from automatic commitment to prison for short recurring periods as the one and only remedy for the less serious breaches of the law.

For purposes of discussion in Congress the closely allied subjects of probation and suspension of sentence, as alternatives to imprisonment, were taken together. The principle of probation has already been approved and adopted in the United States, and in Europe also, for some first offenders and for some minor forms of delinquency, and has fully established its claim to usefulness as a merciful and efficient substitute for imprisonment. The Congress accordingly had no hesitation in adopting a resolution to the effect that it is a beneficial expedient "when applied with due regard to the protection of the community, and to persons who may reasonably be expected to reform, without resorting to imprisonment; and when the probationers are placed for a reasonable length of time under the supervision of competent officers." Their conclusions as to the effects of the suspended sentence carried out under existing regulations are much more guarded in character.

Suspension of sentence is practised in the

United States with a liberality which characterises all their proceedings in the administration of the criminal law, and under varying conditions as to the nature of the offence committed, the period of suspension, and the presence or absence of an accompanying system of probationary supervision. The importance of this latter condition is fully admitted as affording the key to the success or failure of the measure; and the authorities of New York and Massachusetts are now appointing State Probation Commissions to superintend the organisation and execution of the system by a corps of liberally salaried officers. In the European countries which have already adopted, or experimented with, the suspended sentence, the absence of a proper system of supervision over the offenders to whom it has been applied appears to have brought the measure into disrepute, as affording immunity to the malefactor only without any corresponding advantage to society, and to have marred the success of the innovation.

In France *sursis*, or suspension of sentence, has been, since 1891, applicable to persons not previously imprisoned for a common law offence, the conviction to be held in abeyance

for five years, after which period, in the event of good behaviour, it is erased from the *dossier*. M. Mourral, an eminent French jurist, who supplied some statistics on the subject, expressed himself in favour of the principle of suspension, but did not consider that it had an appreciable effect on the crime of the country. Both recidivism and undetected crime in France are increasing, and causing much disquietude, while young persons of 19 to 20 years show a maximum of criminality compared with the adult population. These ill-omened social phenomena are a source of much perplexity and anxiety to French jurists and legislators. To us in England they seem to indicate an ideal field for the application of the principles and practice of the Borstal System, which has practically mastered the corresponding hooligan class who at one time threatened us with a similar social difficulty. So far as France is concerned, the effect upon crime of the suspended sentence, so far as it can be shown by statistics, is not satisfactory.

In Italy, where the suspended sentence has been in use since 1904, it has been resorted to on a very large scale. In 1907, 90,000 cases

were so dealt with, including many grave offences, such as robbery, wounding, violence, etc. There were 3000 revokees out of this number. Too wide an application seems to have been given to the measure in Italy, and in Belgium also, without any resulting decrease in the figures of recidivism. Norway alone claimed the suspension of sentence, where the imprisonment did not exceed three months, as a great success especially in the case of women—a result which on *a priori* grounds we would not expect in England, where recidivism is already higher by 20 per cent among women than it is among men.

The general sense of the Congress seemed to be that some strict form of official supervision is a necessary adjunct to the suspended sentence, if public opinion is to be satisfied that the clemency of the courts is not being abused by those who enjoy its benefits; and further, that this form of sentence, like the indeterminate (in favour of which one United States delegate was willing to consign all the penal codes in existence to oblivion), has its necessary limitations. It would be obviously inapplicable to our worst criminals, the convict class, and to many other habituals to whom

the *real thing* presents so few terrors. In regard to the question of supervision it is, of course, very essential that some responsible authority should look after those who are thus convicted, and provisionally sentenced to some term of imprisonment; but police surveillance has been so much, and so unreasonably, resented of late in this country even for convicts on ticket-of-leave, who are already, by recent rules (April 1911), exempted from police control so long as they "go straight," that it is out of favour for the moment as a means to repentance or reform. For those accordingly whose sentences are suspended, and whose criminal propensities are presumably of a minor kind, it would appear to be advisable that, if they cannot be controlled by the newly appointed Central Board for the Aid of Discharged Convicts, their supervision while on probation should be entrusted to some authority other than the police. The British criminal, though he submits to authority gracefully enough when he is under a charge or in actual custody, is very sensitive to interference from the police when he is free, and specially detests unnecessary supervision when he is making an effort to work or find employment. His

repeated complaints on this score have led to the making of new regulations, although it is well known that the police have discharged their duties tactfully and mercifully, and that they have been much more helpful than exacting to convicts who have shown any genuine desire to amend.

The resolutions of the Congress in regard to the suspended sentence were as follows :—

> That the effects of suspended sentence, without probationary oversight, are difficult, if not impossible, to ascertain.
>
> That it is desirable to introduce and extend laws providing for probation, and to provide in each state or country some central authority which will exercise general supervision over probation work.

Many other subjects in connection with crime were debated at the Congress—how to give effect to penal sentences passed by foreign tribunals, conspiracy in crime, the essential principles of a good reformatory system, improvements in the parole system, productive work for prisoners in small prisons, mendicity, vagrancy, inebriety, penal procedure in case of young delinquents, and the treatment of feeble-minded children showing dangerous moral tendencies.

The vexed question of separate confinement, on which so much difference in opinion and practice prevails between East and West, did not claim much special attention; but a motion was carried expressing the opinion that for prisoners awaiting trial, and prisoners serving short sentences, there should be separate confinement.

In the second section, on the question of modern reformatory principles, the Borstal System came under discussion, and met with general approval. The representatives of France, Hungary, Italy, and Spain contributed papers in support of it; and Dr. Vidal (Toulouse) advocated extension to the age of 25, after which the necessary suppleness and elasticity would be wanting for the reformation of habit. Amongst the resolutions passed in regard to the essential principles of modern reformatory methods it is significant to note that the principle of "retribution" is not yet eliminated from modern penology, but that its importance is still recognised, and has been accentuated in the words of Resolution A2 as follows:—

> That it is in the interest of the public not merely to impose a sentence which is retributive and deterrent, but also to make an earnest effort for the reformation of the criminal.

The general proceedings of the Congress on the whole indicate that the English prison system compares not unfavourably with other systems. In fact, we ourselves appear to be its most severe critics. On some points it met with generous commendation from the foreign representatives. The English practice, for instance, by which every convict knows that by industry and good conduct he can, under the mark system, earn an automatic remission of sentence, is considered much preferable to the continental plan, which is more arbitrary, and subject to the intervention of prefects, procurators, and police. Again, the Borstal System, and the organisation of work in local prisons, were favourably commented on ; while the principle of preventive detention, which is still in a tentative stage only, appeared to meet with more favour in some quarters than the more comprehensive indeterminate sentence. We must not, however, lose our heads over a distribution of prize-medals, or think we hold a dominant position in the sphere of prison reform, for there is at present much competition in this beneficent domain of social activity.

The scene of this memorable Congress

afforded the foreign delegates a unique opportunity for studying the evolution of the penal institution. Side by side with the progressive and up-to-date State Reformatory were seen gaols with all the evil characteristics of the eighteenth century. Indiscriminate association, bad sanitary conditions, want of employment for prisoners, absence of supervision and discipline, the payment of fees to gaolers for the support of prisoners, lack of facilities for proper medical examination of prisoners on reception, and even for bathing and exercise,—these were the conditions which were commonly met with in the county and city gaols. Sir E. Ruggles-Brise conversed with one man "who had been twelve months awaiting trial, and all that time he had been in association with ordinary convicted prisoners." In another prison he came across "a man on the charge of murder who was obviously insane, and subject to violent recurring fits. He was kept in the corridor of the gaol in the sight of all the prisoners, and, as the fits recurred, was strapped down to a bed in the corridor until he recovered." The foreign delegates were apparently bewildered not only by the experiments in criminology that were going on in the

country, but also by the strange anomaly of the very scant consideration shown by the people of the United States to their *minor* offenders. Under the multitude of systems in force in the different States it seems to be necessary for a delinquent to commit some crime that will merit a twelve months' sentence, or to become a felon before he can enjoy the amenities and comforts of a State reformatory, or gain the advantages of the modern reformatory treatment that such an institution provides. Up to the time when he reaches this period of his career, his fate apparently has little interest for, or sympathy from, his fellow-citizens. None deplore this unjust and terrible condition of affairs more than the earnest, kindly, and enlightened section of the American public who recognise its evils, and devote their time and energies to prison reform in the hope of freeing their country from the reproach of a mediæval system of punishment; but political forces and interests in the various States tend, for the moment, to check all progress. Labour laws in many States limit prison labour, and keep prisoners in idleness; race prejudice against the negro, and constant changes of wardens as political parties come and go; the

fee system; parsimony and apathy of the local authorities, and a general desire to make prisons pay their way,—all these conditions militate against the cleansing and modernising of the gaol system. As the second section of the Congress passed resolutions that "all penal institutions, including houses of detention and gaols, should be under the control of a central authority"; and "that all persons, whether sentenced for long or short terms, and whether confined in large or small prisons, should be employed at useful labour, either inside or outside the prison," it is hoped that by the time the next quinquennial Congress meets in London in 1915 something will have been done to bring these institutions up to date, and to mitigate the hardships of those lesser offenders who do not reach the beneficent shelter of the State reformatories or prisons.

The people of the United States are said to be very sensitive to European criticism, even of the responsible kind, in regard to their institutions. To see ourselves as others see us is at the best of times a disagreeable experience; and even if the vision be presented by the most admiring and well-wishing of

blood relations, it is likely to be still more unwelcome, so that one feels some diffidence in touching a subject that may hurt the susceptibilities of a proud and generous people. But criticism is frequently the only means of creating public opinion, and securing the abolition of abuses or social evils; and a healthy public sentiment is the one thing needed to put an end to the existing evils of the gaol system in the United States. The taking over of the English prisons by the "central authority" in 1878, as now recommended for all penal institutions in the above resolution of the Washington Congress, had a most remarkable effect in stimulating public interest in the treatment of the prison population. It is in this direction apparently that America must look for the rehabilitation of her gaol system. Meanwhile it is not too much to say that no one who has any experience of the subject can fail to be impressed by the immensity and complexity of the crime problem in the United States. The figures alone are on a portentous scale; but when to these are added the varieties of races that have to be dealt with, and the different judicial and penal regulations in force in the various States of

the Union, it is obvious that the problem there is one of special difficulty. Over against this, however, must be reckoned the abounding energy of a very progressive people. When due allowance has been made for all these conditions, there remain some features in the American system of dealing with crime that are somewhat perplexing to outside observers. Most of the anomalies, or what seem to us to be so, appear to be traceable to the fundamental consideration that public sentiment in the United States is much more tolerant of, and lenient to, the commission of criminal acts than it is in Europe. The authorities minimise almost to vanishing point the penal element of a sentence even for their worst criminals, and pamper them with prison comforts while they are undergoing their brief courses of reformatory pupilage. Minor offenders, in contrast, are dealt with very differently, and the important object of a humane treatment for *all* prisoners is consequently sacrificed in favour of those who are least deserving. American penologists also seem to us to deal with crime on methods too empirical for a social disorder which is protean in its manifestations, and unlikely to yield to any particular or specific

remedy. The indeterminate sentence is unquestionably a very useful drug, but it is not a complete pharmacopœia. Again, the system of probation is being extended with a rapidity which is as yet hardly justified by any trustworthy statistical evidence as to its efficacy in reducing the crime of the country. We read of 400 probation officers having been appointed in the State of New York alone, so that the number of ex-criminals under supervision at one time must be very large, much greater probably than the whole convict population of England and Wales. Lastly, the criminal who is specially catered for in the State reformatories, and who is often of a dangerous type, appears to be treated more as a damaged piece of industrial machinery sent into the shops for quick repair, than an accountable being whose conduct merits stern punishment at the hands of the community who may be utterly unable to effect his reformation.

It must not be forgotten that the indeterminate sentence, which at present dominates the whole field of American penology, is a double-edged weapon which may be used to the detriment, as well as to the advantage, of the prisoner, according to the particular

national standpoint that may be taken in regard to the rights of the criminal. The proceedings of the Congress served to illustrate this point. Even with ourselves the fear of the legislature is that the sentence might act in curtailment of liberty; and if we can judge from the jealousy of the power of release evinced by various officials, such as procurators and police, under the French, German, and Russian systems, and from the rights of intervention exercised by them, it is probable that the indeterminate sentence might be made an instrument of tyranny undreamt of by its inventors. At the next Congress in London in 1915 more facts and figures should be forthcoming as to the practical working of the indeterminate sentence, as well as that of the suspended sentence combined with probationary supervision. Our own penal system will then come under searching investigation and criticism at the hands of many distinguished foreign experts, and we too should be in a position to produce comparative facts and figures illustrating the recent important changes in our criminal law, more especially in regard to the results of the Borstal Institution treatment, and the working of preventive detention, so as to contribute our

share to this laudable form of international rivalry.

In his opening address to the delegates of the Washington Congress at the White House, President Taft pointed out to them how easy it was to err, either in the direction of a morbid sentiment, or in that of a desire for vengeance; and advised that their deliberations should steer a middle course between these different tendencies. The general sense of the Congress, reflected in the various resolutions which were adopted, seems to have accorded closely with this advice, and it is satisfactory to find that, in an atmosphere abounding in generous sentiment towards the criminal, a learned body of experts has adhered to the normal view that in his own interests, and in those of the public, prison treatment should be penal and deterrent, as well as reformatory, in aim and intention.

CHAPTER VII

ON THE TREATMENT OF MINOR CRIME

Views of Congress on short sentences for the criminal habit—Reformatory sentences impracticable for minor offences—Liberty of the subject a national superstition—Views of Sir Oliver Lodge—Do they manage things better in America? — President Taft on criminal procedure—Lawlessness in United States—Social intercourse in prison—Scope of reformatory sentence—Recidivism in minor offenders—Local prison treatment acts in restraint of minor crime generally—Volume of it—Victims of it—Unsuccessful with drunkards and vagrants—Cures for drunkenness—Penalties for it—Inebriates Act a partial failure—Dr. Branthwaite's statistics of inebriety—Burden of it—Drink crime insanity —State management for inebriate reformatories — Reformatory sentence for drunkard would not be unpopular—Prospects of cure in victims of drink and crime habit compared—Their moral states contrasted — Economic need for curing drunkards — Recidivist drunkard a "waster."

I HAVE already alluded to some of the practical difficulties to be encountered in applying reformatory principles to prisoners who are serving short sentences. It is well we should understand the limitations and possibilities of this branch of treatment. We have seen in a preceding chapter that morality, education, and industry must form the basis of any scheme for the reformation of the criminal's *character*. So

far as his conduct is concerned he may possibly be *reclaimed* by other influences, such as fear of punishment, or self-interest; but character necessarily rests on much deeper foundations. These views closely coincide with the resolutions passed by the Washington Congress—

(3) That reformation is most likely to be accomplished by religious and moral instruction, mental quickening, physical development, and such employment as would place the prisoner on a good industrial basis.

(4) That the reformatory system is incompatible with short sentences, and a relatively long period of reformatory treatment is more likely to be beneficial than repeated short terms of imprisonment under severer conditions.

They add to this as a corollary—

It is strongly to be desired that a system of special treatment be adopted for adolescent criminals [presumably on Borstal lines] whether recidivists or not. Tribunals should be able to sentence to special treatment which (*a*) should be sufficiently long to permit of the full application of all possible means of reformation; (*b*) shall admit the right of conditional liberation on parole under suitable guardianship and supervision on the advice of a suitable board.

But it is obviously impracticable to impart morality, education, and industrial efficiency to

our minor offenders, even if they be recidivists, so long as our present views as to the liberty of the subject remain unmodified, and so long as the authorities are not armed with greater powers of detention. The tendency of all our tribunals at the present time is to shorten sentences, whether of penal servitude or of imprisonment, for every kind of offence. These resolutions, therefore, are, under existing conditions, counsels of perfection so far as our minor offenders are concerned, and pious opinions rather than practical politics. Nothing seems so unlikely to happen in the future as that public opinion in this country will ever tolerate the application of these so-intended "reformatory" sentences to the adult criminals whom the foregoing resolutions propose to net, that is to say, offenders who are in the habit of receiving a series of short sentences for crimes of minor gravity. So ingrained in the British temperament is the idea of the liberty of the subject, even when it means a charter of freedom for the commission of crime, that it amounts to a national superstition. Let me quote one of our philosophers on the question. At a meeting of the Christian Social Union held at the Church House on January 17, 1911,

Sir Oliver Lodge is reported in the *Standard* to have said that—

He did not speak as an expert, but as an ordinary human individual. It was so easy for a magistrate to say "three months," but three hours in one of these dens called cells would be a penalty. He did not think one realised how slowly the time passed. He supposed confinement in these dull surroundings was felt differently by different people, but to many people it was an appalling experience. Freedom was a distinguishing mark of humanity, and to some people the restraint of freedom must have a deadly significance. Confinement did not seem to him to be a satisfactory form of punishment from the point of view of warning, or from the point of view of the prevention of crime. The working classes were extraordinarily patient, but when it came to keeping them in confinement, especially solitary confinement, their patience evaporated. One part of the punishment must be the thinking of what was happening in the outer world, what was happening to those one loved. This must be a kind of mental torture which seemed to him quite inhuman. . . . People who had committed crimes *must not be let loose:* their freedom must be removed when they had abused that freedom. But it was *a serious matter to confiscate a portion of a man's life.* It was a great responsibility, and to merely shut a man up was to waste a great opportunity. It was clear that prisons ought to be reformatories not only for young but for old, and reformatories by different methods. . . . In certain American prisons the experiment of

discipline and regulation was applied. There a person was not sentenced for a certain time. . . . [The italics are mine.]

This extract illustrates the benevolent views which are entertained outside official circles by many persons who are persistently advocating prison reform. "People who have committed crimes must not be let loose," "but it is a serious matter to confiscate a portion of a man's life." This is the dilemma that is presented to a perplexed judiciary. But is it not a serious matter also to confiscate a portion of a man's property, or a portion of a man's life, as criminals frequently do? If any theorist can suggest a scheme by which the criminal can be reformed without being restrained, or deterred without being made uncomfortable, the problem is solved. In the meantime, if the legislature will not apply the reformatory or indeterminate sentence, advocated by Sir Oliver Lodge, even to habitual criminals who have proved hitherto incurable, his theories can have little more than an academic interest for practical administrators.

One of the most erroneous ideas prevalent in regard to the treatment of crime is that they manage these things so much better in America.

It is true that the reformatory principle is very extensively applied in the United States to adult prisoners convicted of serious offences, with a considerable measure of success; but such details as the neglect of minor offenders, the increase of crime in the country, and the seamy side of their criminal procedure are entirely ignored. Many of the best thinkers in the States deplore the immunity enjoyed by criminals under existing laws, and denounce in no doubtful terms the uncertainties and imperfections of their system of criminal procedure. Let me quote a high authority. President Taft, speaking at a banquet given by the Academy of Political Science at the Hotel Astor, New York, on May 13, 1911, contrasted the efficiency of English criminal court procedure with that of America, and "attributed the lack of effectiveness in the American system, although the latter was derived in its entirety from England, to a lighter regard of the law and its enforcement on the part of the American people." Mr. Taft argued "that the authority of the judges should be strengthened, and not curtailed further, as would be the case if the principle of 'recall' were adopted. That was a 'nostrum' of a

certain school of reformers who sought to render judges more subservient to the popular will."

A well-informed correspondent, writing to me from Los Angeles in reference to the dynamite outrage in that city at the offices of the *Times* newspaper, and to the recent arrests made in connection therewith, makes the following comment :—

> Our law procedure is a farce, and punishment for crime is absolutely uncertain, instead of being absolutely sure, as it is in England. This dynamiting business has been going on for five years, over one hundred people have been murdered, and ten million dollars worth of property destroyed, and not one single dynamiter has yet been convicted.

It is a great mistake to imagine that all the prisons in the United States are reformatories, or that the indeterminate sentence is the rule there instead of the exception. Americans themselves would be the last to make such a claim. The amount of lawlessness and undetected crime in the country is proportionally far in excess of anything we can produce; the amount of *proved* crime, as shown by the numbers of their prison population, is also much greater than our handful of 3000 convicts and 18,000 minor offenders represents; and

lastly, their methods of treating crime have still to be submitted to the strict statistical tests adopted by other countries before their efficacy or superiority in reducing crime can be indisputably established. Their outlook in regard to the crime problem they have to solve is at present far from rosy; but, as one of those who consider them capable of accomplishing anything that can be done by man, I believe they will before long sweep the stable.

It is quite clear that the very strong opinions held by many advocates of prison reform in regard to the liberty of the subject are hardly compatible with the basic principles of a really reformatory sentence. All authorities agree that such principles cannot be imparted or acquired, save in very exceptional cases and circumstances, in a brief period of instruction. Those idealists accordingly who hold that all prisons should be reformatories, and who at the same time shudder at the thought of confiscating even three months of a criminal's precious time, have surely adopted a very inconsistent, if not an impossible, creed. But if, besides, a criminal cannot be kept for three consecutive hours in his cell, with work to

occupy his mind and books to solace his leisure, lest he should worry over what is happening in the outside world, the task of administrators will be indeed hard, and their duties perplexing, with the necessities of the social side of prison life thus constantly and prominently before their eyes, and clamouring for attention. The popular idea that social intercourse is the best or kindest thing in a community of criminals is a plausible delusion. Of all the unpleasant consequences of a sentence of imprisonment—and I speak with full knowledge—the particular one which would inspire me with terror and disgust would be that I should be placed in the company of a class of criminal, of whom I have come across many specimens, filthy in thought, word, and action. To any one with a grain of self-respect the society of such persons is an intolerable infliction. I have known convicts, who are not generally squeamish in the matter of strong or profane language, shrink from their obscenity, and beg their officers to rid the working parties of these pests. I have also seen many complaints made by prisoners in letters on the same subject. The death-bed scene of one of them is one of the most unpleasant memories of my service.

He was an old man who had spent his life in prison. Ill-conditioned, violent, and intractable in conduct when he was well, he was fiercely unmanageable when illness overtook him. The obscenity of his language was unimaginable, and he died with a torrent of it on his lips to the horror of the other patients in the ward. The sense of shame is invariably missing in this class. I remember one specimen who, at a special visit that had been granted him, regaled his visitor with filthy conversation in the presence of an officer who, in his innocence, shrank from stopping the visit forthwith, as would have been done in an ordinary case, because the visit was paid on Home Office order.

It must be conceded that companionship of this kind puts a heavy strain on the theories of universal love and brotherhood on which these proposals for developing social intercourse in prisons are founded. Practical people accordingly incline to the view that good conduct, and good conduct alone, should be the passport to the enjoyment of this privilege.

To what extent, then, can the reformatory sentence be used as a hopeful means of treat-

ment for our prison population generally? It is clearly applicable to all our convicts, who, however, from their antecedents and recidivist records, are not very promising material for experiment. In regard to the local prison population, if we take twelve months as a reasonable period for effecting reformation, it will be found that the sentence is practically useless, since less than 1 per cent were sent to prison for periods over a year. But much good may be done even in six months with pupils who are responsive, and who are probably less deeply tainted with the criminal habit than the convict class. If, then, we admit those with sentences of six months, it will be found that about 5 per cent of the local prisoners, whose daily average at present is 18,500, may derive some benefit from a reformatory sentence.

But it must not be concluded in regard to the other 95 per cent of minor offenders that the system of treatment pursued in local prisons is ineffective in repressing crime. The exact opposite is found to be the case in practice, and the record of the local prison in this respect is better than that of the convict prison. Recidivism, for instance, is much

more constant among the exponents of serious crime than it is among minor delinquents. The percentage of male convicts with previous convictions is 88, while that of local prisoners is only 57. Further, the figures of recidivism in local prisons are largely supplied by drunkards and vagrants, a hopelessly incurable class, so that the criminal records of those who are outside the category of these notorious back-sliders contain single or occasional, rather than constant, entries of unlawful conduct. Female convicts, it is true, show a percentage of only 72 with previous convictions, and female local prisoners a percentage of 77; but this is solely owing to the enormous proportion of drunkards found amongst the latter. Drink and idleness, in fact, may be said to account for the bulk of the recidivism found in the local prison population. So far as we can judge from the evidence afforded by statistics, and from general observation of its working, the system of treatment pursued in local prisons acts in restraint of most forms of minor criminality and social delinquency. We find, for instance, that the daily average population of these prisons has declined considerably since 1878, when Government took over con-

trol of them, despite the increase in the general population and the constant addition of fresh offences which have occurred in the same period, so that the actual numbers in custody are largely reduced. We know too that a single experience of prison suffices in the great majority of instances to check the criminal or anti-social conduct of first offenders; and lastly, that the country in general is more free from this kind of minor criminality. But for the chronic drunkards, and the various offenders who come under the Vagrancy Acts, recidivism in the local prison population would be comparatively negligible. This statement, however, must not be taken to imply either that the sum total of the minor crimes committed in the country, or the methods of dealing with them are matters of small importance. The mere volume of such crimes, represented by 180,000 committals to local prisons in the course of a year, constitutes a formidable menace to society; and it is an important aim of administrative strategy to check any kind of crime at its earliest beginnings. The evils resulting from drink alone, although they may be exaggerated frequently for controversial purposes, are incalculable. Other minor offences

also against both person and property, although they may be dealt with in courts of summary jurisdiction, are nevertheless frequently very injurious to individual members of society. The editor of the Judicial Statistics (1909) points out that the victims of predatory criminals are more often than not persons of small means. He adds that crime on a large scale is possible only for the few, while the vast majority must adopt as their motto the rule of "small profits and quick returns." The propertied classes can fairly well protect themselves against all but the more enterprising criminals, and at all events suffer far less than the poor do. To many of the latter the hardships caused by criminals in the lower walks of the profession are very heavy.

The local prison curriculum has been hitherto signally unsuccessful in reforming or deterring drunkards and vagrants. It is very doubtful if the curriculum has any *penalising* effect at all on the latter class, or that portion of it which gravitates to prison as a place of refuge, seeking sanctuary from the unseemly activities of a busy world—

"Like the poor maid-of-all-work who always feels tired,
They live in a world where so much is required."

Drunkards, on the other hand, have been penalised for many decades by repeated spells of enforced abstinence, without any apparent benefit resulting either to themselves or to the community. Happily for us, however, the spread of temperate habits in the general population has counteracted the deficiencies of our penal system, and largely reduced the numbers of drunkards coming under its operation. In 1910 the number of persons committed to prison for offences against the Intoxicating Liquor Laws showed a satisfactory decrease of 5852, as compared with the previous year. As the sum total of these offences still stands at the high figure of 57,418, or nearly one-third of the year's committals, there is still ample room for further improvement. Five years previously (in 1905) the corresponding figures were 71,408, so that it will be seen progress has been steady and continuous.

The vice of drunkenness, as a social evil affecting the community at large, is much too wide a subject for me to enter upon, further than stating my own view that it is much more likely to yield to sociological influences directed to the arrest of its early developments, than to schemes for penalising or remedying the drink

habit when once it has been acquired. As one who has had considerable experience of drugs, and who has witnessed the passing of hundreds of vaunted specifics into the limbo of oblivion, I envy those sanguine people their faith or credulity who pin their trust to the efficacy of drug treatment in curing the drink habit, and who fondly imagine that the lost will-power of the inebriate can be restored to him by a few weeks' medication. The drug, or drugs, which will accomplish this miracle has still to be discovered; and it is about as likely to come to light as a successful method for fitting the patient with a fresh cerebral centre.

To penologists drunkenness has been a despair. The drunk and disorderly person has been at all times such a social incubus that the ingenuity of mankind has been constantly at work devising schemes for suppressing him. All kinds of strategical manœuvres have been tried with him. He has been mulcted heavily in person by the frontal method, and in pocket by the flank method, of attack; it has been suggested to encompass him, and shut him up for long periods in a teetotal atmosphere where he can be bombarded with suitable moral

artillery; or to ambush him by relegation to a place where there are no excise duties; or to cut his communications effectually by abolishing the whole drink traffic; but so far he has outwitted all his adversaries, and no country in the world has yet devised a satisfactory method of punishing and correcting him.

The last serious attempt made by our own legislature to grapple with the difficulties of the question was the Inebriates Act of 1898. At the recent Washington Congress, England was credited with taking the lead in legislating for the criminal inebriate. The English principle has since been recognised in Norway and Switzerland; while the tendency of American legislators is rather to record the habitual drunkard as a type of "mental defective" and to treat him accordingly. The Act of 1898 was well conceived, being based on the facts, repeatedly insisted on by medical men who had studied inebriety, that our methods of dealing with habitual drunkards by repeated short sentences were utterly wrong in principle, in addition to being futile, and that we were practically aiding and abetting the manufacture of a weak-minded class of persons, many of whom eventually became hopelessly insane.

The notorious Jane Cakebread, who had been convicted and imprisoned hundreds of times, was a type of thousands of chronic dipsomaniacs who swarmed in our local prisons. The constantly recurring scandal of her convictions, and the picture she furnished of the mental and moral degradation which invariably result from chronic indulgence in alcohol, afforded an object lesson that could not be ignored. The Act accordingly was intended to cure these chronic drunkards if possible, and, if not, to relieve society of their presence, and of the constantly recurring expenses of convicting them, by prolonged periods of detention in reformatories under medical care and treatment. These objects have been only partially attained at present owing to certain defects in the Act which need amendment. The duty of providing the reformatories, instead of being assigned to the State only, was left largely to local authorities and philanthropic societies, who were expected to render *voluntary* assistance, and share in the heavy expense of maintenance. Disputes and difficulties arose on these subjects, and the usual results of divided authority and responsibility followed. Some of the buildings were closed,

and at present twelve only are in regular work, two of these being maintained by the State at Aylesbury and Warwick—the total accommodation being for 196 men and 1121 women. When these figures are compared with the 57,000 persons committed for drunkenness in a single year, it will be obvious that the accommodation is on a very meagre scale if the full benefits of the Act are ever to be reaped.

But in the meantime very few persons are being committed to the reformatories owing to some further difficulties in administering the Act as it stands. Courts evince more and more reluctance to commit chronic drunkards, who are not guilty of serious offences, for long periods of detention; and the working of the Act is consequently hampered. As a device for suppressing the drunk and disorderly type of recidivist, this piece of legislation, which subjected him to a possible three years' detention in a reformatory if within the preceding twelve months he had been already convicted three times for similar offences, was the most drastic measure that had ever been tried for the purpose; but in practice it was only applied by the courts to the most confirmed "Cakebread" type of

inebriates, whose mental powers had been already so impaired by constant indulgence in alcohol that they could derive little or no benefit from the treatment, further than an improvement in general health for the time being, as a result of living under better conditions and in a state of abstinence.

In a paper read before the Washington Congress by Dr. R. Welsh Branthwaite, H.M. Inspector under the Inebriates Acts, a very interesting analysis is given of the mental state of the total number of persons admitted to the reformatories in the course of ten years' working of the Act. These figures include 443 cases of habitual drunkards who were convicted on indictment of offences, *other than mere habitual drunkenness*, punishable with imprisonment or penal servitude, and in regard to whom the courts were satisfied from the evidence that their offences were committed under the influence of drink, or that drunkenness was a contributory cause of the offence. Unlawful neglect of children was the cause of conviction in 350 of these cases—an eloquent commentary on the degradation of human feeling brought about by drink—while suicidal attempts accounted for 33, and larceny for 35

cases. The analysis shows that out of the total admissions, 3032, there were 63 who had to be certified insane and removed to asylums; 377 were classed as "very defective"; 1487 as "defective"; and only 1105 as of "average mental capacity on admission, or after six months' detention." It will be seen, therefore, that only 36 per cent of the total could be regarded, from a mental point of view, as likely to derive permanent benefit from reformatory treatment. Dr. Branthwaite says on this subject:—

> Those who have had experience with inebriates fully realise the struggle which has to be endured between will and inclination before a victim to the condition can throw off his fetters—a struggle which in some cases has to be sustained through a long life in order to maintain sobriety when it has been regained. It is quite clear that a moderately sound mind is required to effectively exercise these essentials to success; and, conversely, that failure is almost certain to follow upon an attempt to practise them by persons who are mentally incapable of such exercise.

It will be seen that the actual number of topers dealt with (2589) in the ten years is infinitesimal when compared with the hosts of eligibles, and that their tippling qualifications

have been so undeniable that the courts seem to have based their selection on the prospects of affording some little social relief rather than on expectations of weaning inebriates. The result for the ordinary drunk and disorderly offender of the police courts is that he still enjoys sufficient immunity to enable him to say that he is unconquered; and that he enjoys further the doubtful kind of freedom which enables him to drink himself into insanity, or even to death. Society in the meantime groans under the burden of maintaining him or *her* (for she too is a flagrant toper) during the greater portion of every year, paying heavy legal expenses for his capture and conviction in the brief intervals between his sentences, and having to submit to the intolerable nuisance of his vagaries, whether absurd, indecent, or dangerous, when he is at large.

The causal relationship subsisting between the drink habit and crime is well established in a direct way in the case of nearly one-third of the local prison population. A similar relationship between the drink habit and insanity is found in the asylum population. These chronic drunkards who have passed

through the reformatories exemplify in their own persons simultaneously the twofold effect of drink on character and mind. The picture they afford of a lapse into crime followed by impairment of will- and mental-power, and, in many cases, by absolute loss of reason, is a striking confirmation of the truth of both theories. Out of the total number of them admitted to the reformatories no less than 20 per *thousand* became insane; while the ordinary local prison population shows an average of less than 2 per thousand insane cases. Similarly the mental defectives amongst them are more than ten times as numerous as they are in the local prisons. That several of these drink victims were not very strong-minded people in the first instance is true; but the fact that many of them recovered, and regained sufficient mental tone to enable them to resist the temptation to drink, shows that alcoholism played a leading part in the impairment of their faculties.

Since 1878, when the local prisons were taken over by Government, the care and custody of the drunk and disorderly have been vested in the State. It seems somewhat unreasonable and reactionary now to remit

these offenders to the care of local authorities, whose divergent and variegated methods of managing prisoners in the past led to many abuses and irregularities which the Prisons Act of 1877 was specially designed to rectify. Local authorities, moreover, grumble not unnaturally at an expense being imposed on them which has hitherto been borne by the State, so that they seem to have a good deal of reason on their side. As an abstract question of public policy there can be no doubt of the justice of the contention that full State control is quite as essential for drunken recidivists as for any other class of criminals. A departmental committee which has inquired into the working of the Inebriates Act of 1898 has accordingly recommended that the State should take over the management of the institutions in which these offenders are to be detained. The results of the inquiry tend to show that, even with its existing defects and limitations, the Act has been by no means a failure. It has proved, for example, that some of the worst cases of drunkenness can be cured, it has shown that many of those who retained a remnant of mind were satisfactorily rehabilitated—incidentally

demonstrating the wide field still open for further effort—and it has emphasised the fact by concrete examples that chronic indulgence in alcohol saps the mentality of those who practise it, and so leads to a dangerous form of degeneracy. In the interest of eugenics as well as of social reform it is very needful to amend and enlarge the Act, and to encourage those who administer it to make full use of its provisions.

If the habitual drunkard is to be eliminated, the Inebriates Act is the only promising measure for accomplishing the end in view. Fines and short sentences, which have been the stock remedies from time immemorial, have utterly failed to suppress this leading national vice; and it is quite impossible to imagine they can ever cure it. "Seven days or ten shillings" is a formula that serves as a useful reminder, or a kind of social regulator, to the occasional or convivial drinker; but the chronic toper's longing for alcohol is much too strong to be influenced by such transitory penalties. There is no reason to think that a reformatory sentence applied, after a fair trial, to a really proved habitual drunkard would be unpopular. The public as a rule tolerate, rather than love,

him. The sober and orderly demeanour of a bank-holiday crowd at the present time, which is in striking contrast to what it was some years ago, affords a tolerably clear indication of popular sentiment in regard to drunken habits; and the drunkard in such an assembly, though he may give rise to some mirth, is nevertheless cold-shouldered by all who do not seek amusement at his expense. At the best of times the drunken recidivist who spends most of his time in prison is an inefficient worker, and a very desultory kind of bread-winner, who drinks the support of his dependants with the utmost indifference to their fate; and he commands very little sympathy from prison reformers of humanitarian tendencies, although he is not actually of *criminal habit*, and his general conduct, for which a plea of irresponsibility might fairly be set up, is frequently far less reprehensible than that of the predatory class of offenders, on whom so much sympathy is lavished. He has no friends at present — and he is certainly not a friend to himself—except the courts which show a desire to protect his liberty by declining to subject him to long periods of detention, so that there would

appear to be no insuperable objection, so far as popular sentiment is concerned, to placing him in comfortable quarters, away from the risks of temptation, even for lengthened periods, for his own as well as the public good. The prospect of deriving benefit for himself from a reformatory sentence is at least as good in his case as in that of the victim of the *crime habit* of similar age. I am inclined to think, from my acquaintance with the material, it is rather better. It is true that female drunkards, who generally take to drinking habits late in life, are notoriously difficult to reform; but with men the chances of success are much greater. Dr. Branthwaite estimates that only 40 per cent of those sent to the reformatories had sufficient mental capacity to be considered reformable; and that half of these have done well. It is very doubtful if a similar number of victims of the crime habit of adult age would yield so good a result. Certainly the records of professional criminals in the convict class, who are by no means lacking in mental power, show no such susceptibility to reform.

The mental capacity of the professional criminal is much higher than that of the

chronic drunkard; but his moral sense or moral capacity appears to be of a lower order, and less responsive to good influences. In both types alike the mode of life tends to accentuate their defects of character. This tendency is more marked and certain, and probably also more progressive, and might be assumed to be more permanent, in the case of the drunkard who undergoes physical, mental, and moral deterioration simultaneously; and yet the moral deficiencies of the victim of the crime habit, as he is known to us, appear to be, under our present methods of treatment, almost beyond the reach of remedy. His anti-social conduct is based apparently on an inherent and positive vice of character which regulates his actions; while the anti-social conduct of the drunkard is due solely to the toxic effects of a poison whose attractions he has not the strength of character or will to resist, and to whose physiological influence he yields more readily than a normally constituted person. Many of the heaviest drinkers who are constantly "soaking," and in whom the stage of satiety is reached before intoxication comes on, never appear in a police court. Their physiological peculiarity gives them an

unmerited advantage, in immunity from punishment, over the weaklings who yield up possession of their senses on slight provocation, and whose actions are then at the mercy of an uncontrolled piece of mechanism which is faulty at the best of times.

For these wretched victims of the drink habit, as they are seen in captivity, I must confess that I retain a certain kind of sneaking sympathy, which I find it hard to conjure up for their companions in misfortune, the victims of the crime habit. The atmosphere surrounding the latter class is always pervaded by a subtle sense of make-believe which inspires a want of trust and confidence that is inimical to the generation of sympathy. The air around the former, on the contrary, is much purer, more bracing, and more honest. They seem, when in their sober senses, to have many amiable traits of character and generous instincts, which offer a favourable field for higher developments, and leave the impression that the vices of this class are due very often to the defects of qualities which are neither pernicious in themselves nor insusceptible of modification. In their own interests, therefore, it is very expedient that some efforts

should be made to restore their respectability, and very necessary that the reformatory sentence, which is specially adapted to their requirements, and which has been already sanctioned by law, should be resuscitated, and resolutely applied with a view to their rescue. These steps are equally necessary and expedient in the public interest, for the ordinary drunken recidivist who frequents our prisons is absolutely unrivalled as an economic waster. The trail of poverty, misery, and social degradation he leaves behind him on his road to ruin, and the regal expenditure he entails on the State, combine to make him by far the most costly of the social parasites who at present prey upon the community. So long as mankind finds in alcohol a solace for misery, or a source of pleasure, the total elimination of the drunk and disorderly person can hardly be looked for under any regime we can imagine; but, at a time when a natural decrease is taking place in the number of prison drunkards owing to a general improvement in the habits of our people, a favourable opportunity is presented for hastening his steps in this direction by the adoption of a promising method of eliminative treatment, supplied by the reformatory sentence,

which is infinitely better than leaving him, as we have hitherto done, to compass his own destruction under the silent forces of natural selection.

CHAPTER VIII

ON THE TREATMENT OF MINOR CRIME—*contd.*

Penology of vagrancy—Tudor legislation—Departmental Committee 1904—Definition—Characteristics of vagrants—Numbers—Prison attractions—Prisoners, casuals and paupers—Causes of vagrancy—Efforts to check it—Lack of uniform administration—Vagrants sensitive to regulations—Begging—Able-bodied vagrants in prison—Court procedure erratic—Severity impracticable—"Mode of Life"—Recommendations of Committee—Definite regulations a necessity—Slipshod legislation demoralising to administrators—Policy of Committee a promising one if resolutely applied—Vagrancy in Europe and America—State aid and Rate aid—Coercion—Vagrant needs to be remade—Classification of minor offenders—Specialisation of groups—Courts not using their powers to classify—Suffragette movement—New powers to classify vested in Prison Commissioners—Classification in prison—Our penal system passing through a transition period—Prisons should be reserved for criminals—Reformatory sentence for habituals.

In that department of minor crime which has to do with drunkenness, and habitual drunkards in particular, we have already seen that our penal system cannot lay claim to much practical success. Occasional offenders have undoubtedly been deterred in many instances by even short experiences of imprisonment, but habituals have remained undaunted. Our methods of treatment have, in fact, been crude and un-

scientific in conception, purely penal and deterrent for the most part in intention, and very rule-of-thumb in practice. Up till quite recent times the ordinary street drunkard has been regarded rather as a social nuisance than as a person requiring care on account of his state of mind. He has been allowed to go on repeatedly depriving himself of his senses until his temporary aberrations have become fixed, and his social inefficiency so stereotyped that he is at the present time a very expensive State pensioner. At the same time the various social regulations and devices other than imprisonment which have been aimed at the drink evil, such as fines, black-lists, reduction of licences, etc., have been evaded with similar ease by a drunken class, and cannot be said to have contributed materially to the national sobriety.

But the penology of vagrancy is in a still more unsatisfactory state, for, although it has a venerable and picturesque past, its present is by no means reassuring. Prison drunkards diminish, but prison vagrants increase in quite an alarming fashion. The difficulties with which we are confronted at the present time in connection with this class of offender seem

to be identical with those experienced by penologists in the time of Edward VI. The whole Tudor period abounds in legislative measures designed to repress begging under various pretences, such as professing to tell fortunes by means of "physyke, physnamye, palmestrye, or other craftye scyence"; also to repress "rufflers, sturdy vagabonds, or valiant beggars, who were guilty of wandring, loitring, and idelness." The penalties for these offences included whipping, stocks, pillory, branding, mutilation, slavery, and death. The preamble to an Act of Edward VI. declares that previous legislation "hath not had that successe which hath bynn wisshed, but partelie by folishe pitie and mercie of them which shoulde have seen the said godlie lawes executed, partelie by the perverse nature and longe accustumed idelness of the parsons given to loytringe." Here we have a tolerably fair epitome of the present situation. The problem is not new, nor can it be said that the type of social wastrel is yet rid of that perverse nature and long-accustomed idleness which go with a habit of loitering. Through all the ages and centuries of change he has retained his pernicious characteristics, and offered a triumphant

resistance alike to the barbarities of mediæval punishments and to the influences of advancing civilisation. The general question is much larger than that with which I am chiefly concerned, namely, vagrancy as it is seen in our prison population. Vagrancy constitutes a social danger of considerable magnitude which threatens our national efficiency, and accounts, it is to be feared, for not a little of that unemployment from which we are suffering. In July 1904 a Departmental Committee was appointed to inquire into the law relating to Vagrancy and its administration. They considered the vagrant under several heads: as a wayfarer, as an inmate of casual wards, common lodging-houses, or shelters, as an occasional worker, as an offender against the law, and as an inmate of prisons; and they drew up a very valuable report on the whole subject with recommendations as to the future treatment of the vagrant class. They say :—

> The army of vagrants has increased in numbers of late years, and there is reason to fear it will continue to increase if things are left as they are. It is mainly composed of those who deliberately avoid any work, and depend for their existence on almsgiving and the casual wards; and for their benefit the industrious portion of the community is heavily

taxed. We are convinced that the present system neither deters the vagrant, nor affords any means of reclaiming him, and we are unanimously of opinion that a thorough reform is necessary. Briefly, the object of the scheme which we propose is to place the vagrant more under the control of the police, to help the *bona fide* wayfarer, and to provide a means of detaining the habitual vagrant under reformatory influences.

The term "vagrant" is much too comprehensive to be easy to define. Blackstone quotes "ancient statutes" as defining vagrants to be "such as wake on the night and sleep on the day, and haunt customable taverns and alehouses and routs about; and no man wot from whence they come ne whither they go"—in fact, loafers without fixed abode, and without visible means of subsistence, as we should put it. All varieties of the genus are to be found in the prison population — "rogues and vagabonds," "incorrigible rogues," "masterful beggars," "sturdy and valiant beggars," "tramps and casual ward idlers," to whom the stocks and the pillory were familiar instruments in former days. In prison, as outside, they are intractable from their inertia. Even on the tread-wheel I have seen them "take it easy" beside the toiling novice; and on the combined

crank their tell-tale apparatus was constantly proclaiming the fact that they were economising force by the ounce at the expense of their neighbours. As a class they produce more reports for idleness and refusal to work than any other in prison; and no measure of coercion or punishment has been successful with them under a short-sentence system. Slow to think, speak, and act they are experts in inactivity, who resent the discipline, dislike the work, and abhor the order and routine of a prison. More cordially still do a great many of them detest the casual ward; but steady work of some kind is the disagreeable alternative to these retreats where food and shelter are at least assured, and labour, which is not at any time heavy, can be evaded by many subterfuges. When free they rely on the milk of human kindness for their nutriment; and their migratory instincts, which incidentally relieve them of rent, rates, and taxes, baffle the authorities in all attempts to control, or even to enumerate them. The Committee tell us in their report that any figures which profess to give the *total* number of vagrants must be regarded as a mere estimate, since it has been found practically impossible to trace them all in

the various haunts which they frequent. No such difficulty arises in regard to those who reach prison. The Prison Commissioners furnished the Committee with a return showing that in February 1905 more than one-fourth of the total prison population were persons who might be considered to belong to the vagrant class. In 1910 the actual number of persons committed to prison on conviction for offences against the Vagrancy Acts was 33,766. The Prison Commissioners tell us that the offences of "begging" and "sleeping out" included in the above figures showed an increase of 2487 over those of the year 1909; and that the figures of 1909 for these offences showed an increase of 4178 over those of the previous year. These statistics of Prison Vagrants indicate the magnitude and progress of the evil, but they are not all. In 1910, under the heading of offences against the Poor Laws, 4601 paupers were sent to prison for misbehaviour in the workhouse; 584 for stealing or destroying workhouse clothes, and 906 for other offences—making a total of 6091 to be added to the *direct* committals for vagrancy.

From the numbers as a whole it may fairly be inferred that imprisonment as carried out at

present does not deter vagrants, but that it probably attracts a good many of them. From the numbers transferred from the workhouses to the prisons it may fairly be inferred that prison is the more popular institution in the eyes of at least a considerable number of them. The latter result is by no means surprising. Prison diet and prison accommodation are better than those of the casual ward; prison work is lighter, and prison discipline much more uniform than it can possibly be under a host of local authorities with varying ideals, while the ordinary prison routine is also the same everywhere. These features are matters of concern to a lazy class who will not trouble to learn anything, and who resent new and irritating methods of interference on the part of officials. As a class these vagrants are notoriously reticent and uncommunicative when questioned, and, although they frequently admit their preference for prison over the workhouse, I could never elicit from them any more satisfactory explanation than—"They" (that is the workhouse officials) "are always messing you about," or, "They treat you like a dog there," or "They are bullying and worrying you from morning till night." The replies

probably do not explain everything; but they suggest the idea that the vagrant may interpret as irritating interference what is merely a piece of local routine to which he is unaccustomed. Whatever the real motives of the preference may be, his point of view never indicates any subtle distinction between the shades of disgrace that may attach to one institution more than the other. Most of the prison vagrants have tried both, and they incline to look down on the casual just as the casual sometimes looks down on the workhouse pauper. A witness before the Committee gave an instance of this view of precedence:—

I went into a casual ward one morning; one of the ordinary inmates of the workhouse, whose duty it was to see that the hammers and things used for breaking stones were all right, happened to say something to one of the casuals who was breaking stones. The casual laid his hammer down, and looked the inmate up and down two or three times, and then said: "Are you speaking to me, pauper?" "Yes," he said, "I am speaking to you." "Well," said the casual, "all I have got to say is, you ought to be ashamed of yourself. I am here generally three months in the year; the other nine months I work; but, no matter when I come, you are always here. You are always living on the ratepayers. I am content to live on them for three months in the year. I am not a pauper. I am a casual."

It is not to be wondered at that the solution of the vagrancy problem is still open to competition, since we continue to manufacture vagrants at one end of the scale, while we try to suppress them at the other. The real cause of vagrancy, as the Committee point out,

> is beyond the power of legislative or administrative action. Were it not for the indiscriminate dole-giving which prevails there would be little necessity for casual wards or labour colonies for the vagrant; and idle vagrancy, ceasing to be a profitable profession, would come to an end.

It is idle under these circumstances to expect that vagrancy as a social evil will be abolished, although much may be done to keep it in check. The history of unsuccessful effort in this direction in the past displays every variety of ineptitude that could be brought to bear on an important social question. The vagrant has been regarded from time to time, according to popular fancy, as a dangerous criminal, as an idle pauper of lazy habits, and as a worthy object of some of the most indiscriminate kinds of public and private benevolence. He has passed through the hands of various authorities animated by diverse aims, police, poor law guardians, speculative doss-

house keepers, and high-minded philanthropists. In prisons he has undergone ferocious and useless punishments; in workhouses he has studied the vagaries of guardians and the beneficent progress of the Poor Laws from the despotic Bumbledom of the nineteenth century to the latter-day amenities of the Poplar Union; in doss-houses he has consorted with his kind and disseminated his principles; and lastly, under the pampering care of the philanthropists, who supply him with food and shelter without any disagreeable obligation to work, he has increased and multiplied his order. The social regulations which have been framed from time to time for his control have been innumerable, but they have been for the most part loosely drawn and easily evaded, and, in the hands of local authorities, who often hold strong and eccentric views, they have been so laxly administered, that the paramount object of all seems to have been to get rid of the vagrant, and hand him over to some other agency by as rapid a method of transfer as possible. A lack of uniformity in the whole Poor Law system, coupled with slipshod methods of administering it, has enabled the vagrant "to choose his own pitch," whether it be the prison, the workhouse,

the casual ward, or the road, and to have a fairly good time in any of them. A somewhat curious feature observable in the evolution of the vagrant is that he appears to be more sensitive to the effects of new regulations, especially in regard to detention and tasks of labour, than other offenders. A drop in the statistics of vagrancy is a constant result of any increased stringency in these matters, and it shows itself almost immediately. The Committee remark :—

> It appears to have been the experience that on most occasions when an Act has been passed, or an order or circular issued by the Central Authority regulating the treatment of vagrants, the number of these persons has fallen, only, however, to rise again gradually until the next Act or Order.

Whether on these occasions the vagrant takes to work for a time, or falls back on one of his alternative "pitches," or lives on reserve funds which he is said to keep in "leaving places" to meet emergencies, is not clear ; but his experience of constant changes in orders and regulations renders him an adept at re-adjusting himself to new situations, so that he is everlastingly turning up again like the traditional bad halfpenny.

Of all the offences against the Vagrancy Acts, including begging, sleeping-out, gaming, found in enclosed premises, frequenting, living on prostitutes' earnings, etc., begging is by far the most common, accounting, as it does, for 20,709 committals out of 33,766 in one year. Great as the extent of the social malady revealed in these figures may be, some of the higher branches of the begging profession are not represented amongst them. There are many more and many meaner beggars in existence than these peripatetic representatives of the fraternity. Those who obtain charitable contributions by fraud, and those who exploit the benevolent weaknesses of generous people who forgive and forget them, are a much more numerous class than police court records, or even the archives of the Charity Organisation Society, indicate. Until the authentic correspondence of some well-known and philanthropic millionaire is given to the world we shall not have a clear idea of the extent to which this remunerative industry maintains in demoralising idleness a very worthless class. Mendicity in the present day is a very profitable pursuit; and it attracts many grades of impostors, from the impudent begging letter-

writer, who is said to have got a contribution for his funeral expenses by writing in the name of his own consumptive widow, to the sly tramp who only wanted "a bit of sewing done," and handed a lady a button with the request that she would sew a pair of trousers to it.

Able-bodied specimens of the vagrant order as seen in prison are a hopeless and despicable set. Not only is the work habit in them to all appearances dead; but the last vestiges of an independent spirit, and all sense of shame seem to have vanished with it. One of them says, for example, he "was not begging but selling laces and matches, and he has twelve and something capital in the reception ward." Another says he was "going to 'elp a lidy with 'er pāācel, and that he was not loiterin' nor going to commit no felony." Another traces his misfortune to the untimely death of his mother, who, it seems, worked six days a week at the wash-tub, while he, on two days a week, delivered the clothes, and "did an odd job occasionally" on the intervening days. The loss of his permanent job, which was not a laborious one, left him derelict. This specimen was quite young and strong, and he was

obviously in an early stage of manufacture, but his future seemed to be assured. He had been sent to prison—his first visit—on a short sentence for refusing his task in the workhouse; and he was under report for idleness in prison when he made these disclosures as to the hardness of his lot. His case is a good example of an ill-brought-up lazy loafer who is heading straight for a career of habitual vagrancy, if indeed he does not cross the narrow border-line which divides this state from subsistence on petty larceny. He was far too inefficient to make a living by professional crime. On several subsequent occasions he made appearances in prison *via* the casual ward; but he became very reticent about his grievances, and seemed to have finally selected a permanent job which was more to his liking than any of those in the open market for which there was such unseemly competition.

The procedure of the various courts, dealing with vagrants as punishing authorities, is quite as erratic as that of the Poor Law administrators. All the courts alike recognise the impossibility of inflicting prolonged penal sentences on persons whose offences are for the

most part of a negative character. Many magistrates, paid and unpaid, who have powers undreamt of for dealing with vagrants, think so lightly of their offences that they consider a moral lecture or a few days' imprisonment adequate penalties for them. Others look on a month in prison as well merited by a vagrant, and lament the premature demise of the tread-wheel, which was erroneously supposed to be a remedial agency for "valiant" beggars. The sentences awarded, therefore, in ordinary cases vary in practice from three to twenty-eight days, according to the point of view of the particular adjudicating authority in each case, whether, in fact, this authority looks on an act of vagrancy as a criminal offence, or as a mere social shortcoming. The longer terms of imprisonment passed at Quarter Sessions are reserved for incorrigible rogues who are at the head of their profession, and who have very often committed some overt act of criminality. Since these long penal terms are inapplicable to the majority, and short terms have proved a failure, it has been suggested that some more severe penal treatment should be dealt out to vagrants generally; but differential treatment of this kind applied to a class who

are really less criminal in habit than ordinary offenders would be an invidious and impolitic step which it would be hard to justify. Detention is probably the only feature of imprisonment which is really irksome to them at present; and as any extension of this detention under penal conditions is out of the question, no other measures of severity, consistent with the principles of humanity, which would place vagrants on a lower level than malefactors of a more active type, would either be tolerated by public opinion at the present time, or would be at all likely to divert them from the mode of life which their perverse inclinations have led them to adopt.

It is this "mode of life" which really constitutes the crux of the whole vagrancy question. Hitherto attempts have been made to discourage its adoption by irksome conditions irresolutely imposed, and by paltry penalties unevenly distributed; but no genuine efforts have been directed to the reformation of those who have already entered on a career of vagrancy. The Committee, however, make this latter object the basis of their recommendations, and they advise that habitual vagrants in future should be dealt with as persons

requiring detention on account of their mode of life. It is hoped that by placing them, when in their chrysalis stage, under the single authority of the police, uniformity of administration will be attained; and that by placing them, when in their developed condition, in labour colonies, they will be trained to the work habit, and gradually weaned away from idleness, so as to lead industrious and useful lives; or, if these measures fail, that the longer periods of detention will at least afford some relief to the community, and deter idlers from entering casual wards and prisons. With a view to attain these objects the Committee recommend:—

That casual wards should be placed under control of the police authority.

That a task of work should be enforced, and that it should be a time task.

That detention should be for a minimum of two nights except in case of men with way-tickets.

That, in regard to vagrancy offences, short sentences should be discouraged. Where the sentence is for less than 14 days, it should be limited to one day, and the conviction recorded.

That habitual vagrants should be sent to certified labour colonies for detention for not less than six months or more than three years.

No one who has had any experience of the *personnel* to be dealt with can have any doubt that the enforcement of these recommendations will have the effect of revolutionising vagrancy. Legislation is now required to carry them out; and it will have to be of the clear-cut order if it is to exercise genuine restraint over these elusive and evasive wastrels, and rescue them from futility. A very definite set of rules and regulations should be laid down by the legislature, so as to ensure uniformity in diet, conditions of labour, and general management, on the lines of the Prison Act of 1865. Local authorities have scant respect for administrative orders as compared with legal enactments; and, if much is left to their discretion, the discreditable history of their dealings with vagrancy will undoubtedly repeat itself, and the whole scheme end in failure. The slipshod or sloppy legislation, of which we have had too many examples recently, and which leaves the important working details of an Act vague and doubtful of interpretation, invariably demoralises administrative authorities, leading them either to usurp powers which they were never meant to possess or exercise, or, on the other hand, to shirk responsibilities which they are

afraid to face. Under such circumstances they very naturally resort to a hesitating or vacillating policy, sometimes bold, sometimes inept, which never succeeds in carrying out the intentions of the legislature. Many instances could be given of the actual occurrence of such a series of events in recent times—instances which serve to throw a flashlight on the probable happenings under a new Vagrancy Act worked by a set of unguided or misguided local authorities endowed with generous views and a free range of interpretation. A clear and definite code of rules and regulations based on the Act is therefore an indispensable necessity, not only for those who are subjected to its provisions, but also for those who have to administer it. The policy foreshadowed in the report of the Committee is, in the opinion of those best qualified to judge, the most promising line of treatment that has ever been suggested for the repression of vagrancy. If the scheme is only resolutely administered there is much ground for thinking it will be successful; but all attempts to revive the socialistic or eleemosynary experiments which have done so much to keep alive the spirit of the road in the vagrant class must be strenu-

ously resisted if any effective check is to be placed on a pernicious system of recruiting which counteracts and neutralises all reformatory efforts. No satisfactory progress can be expected if the veterans who are rehabilitated, or restrained for the time being from living on the public, have their places rapidly filled by fresh batches of subsidised mendicants.

For several centuries vagrancy has been a scourge in Europe. England has suffered a good deal, and at certain periods the figures have been enormous; but other countries have also from time to time been infested with nomadic ne'er-do-wells of all kinds,—maimed, halt, blind, and lazy. At the recent Washington Congress one speaker estimated the number of vagrants at present roaming the country in France as 400,000. The same state of things is found in Hungary. Compared with these statistics our own look modest. The departmental committee estimated that the number of persons with no settled home and no visible means of subsistence in England and Wales probably reaches, at times of trade depression, as high a total as 70,000 or 80,000, while in times of industrial activity (as in 1900) it might not exceed 30,000 or 40,000. Between these

limits the number varies, affected by conditions of trade, weather, and economic causes. In regard to the *habitual* vagrants, who are not affected by trade conditions, their estimate was that the number did not exceed 20,000 to 30,000. Even in the United States the vagrancy evil is making its appearance; and in the State of New York especially, we are told that "grave concern is felt by the authorities both as to the magnitude and the growth of this form of social parasitism." Whether American vagrancy is home-bred or imported does not appear; but it will be very interesting to watch their methods of warfare against this social difficulty which has baffled Europe for centuries. But our own vagrant host, as the above figures show, is at all times excessive. State aid and rate aid, which are directed to the relief rather than the cure of an idle class, have contributed largely to swell its ranks. Coercion by penal treatment, on the other hand, has been a fiasco. Prisons, as they are at present conducted, are quite congenial rest-houses for the perfected type of vagrant; and they cannot be made hot enough for him without the risk of scorching the other inhabitants. With these obvious incapacities for being either led or

driven, the vagrant, as he is known to us, is a true type of the impracticable person who would need "to be made over again and made different." The method now proposed for dealing with him is the nearest possible to this process. Segregation from an alms-giving public, and restraint under a strict course of training for long periods in a labour colony, where work will be taught and enforced, afford the best prospect of inducing him to climb the industrial ladder, and forsake once for all his miserable career.

I have dealt at some length with these two large classes of minor criminals—drunkards and vagrants—who constitute about one half of the local prison population, showing in regard to each of them that our present system of treatment is defective, and pointing out the new lines on which it is proposed to deal with them in future. By sheer weight of numbers alone these short-term drunkards and vagrants, continually passing in and out of prison, have paralysed the authorities in their efforts to classify the inmates of local prisons. Individualisation of treatment for all prisoners, which is the lofty ideal of modern penologists, has never been attained, nor is it likely to be in

the future until the ranks of minor offenders who are punished by a few days of imprisonment have been considerably thinned out. In the meantime, however, the *specialisation* of certain groups of them for purposes of treatment, such as habitual vagrants and chronic drunkards, and the elimination at the same time of all mental defectives from the prison population should hasten the advent of a more individual and personal kind of treatment for those who are capable of profiting by it. Students of criminology are at last beginning to see that such a scrap heap of social failures as our prison population consists of cannot be dealt with in the mass, and that sorting out of some kind is necessary if we are to utilise to the best advantage the various items of which it is composed according to their capacities. We used to hear much of classification being a cure for all the evils of a prison system, and that prison treatment should have regard both to the nature of the offence and to the antecedents of the offender. At the present time this sound theory appears to be losing its popularity, and to a certain extent its practical efficacy, through the teaching of those enthusiasts who denounce separate confinement, and

advocate association for all sorts and conditions of offenders alike as *the* prime and vital necessity for them if they are to derive any profit from a sentence of imprisonment. Classification for the time being under the influence of the new school retires into the background. To what extent the procedure of the courts is influenced by the new theory it is difficult to prove, but there can be no doubt of the fact that magistrates are ceasing to use the power of classifying offenders which the Prison Act of 1898 placed in their hands. This Act gave the courts a wide discretion for placing offenders in different categories carrying different prison treatment, according to the nature of the offence, and to the antecedents of the offender. The annual reports of the Prison Commissioners testify to the very small use made by the courts of this important power, and the exercise of it is now becoming so rare that "we are almost forced to recognise that the classification aimed at by the prison reformer will not be attained by relying on the discretionary power of the courts of law." The numbers of those who are now being placed in the first and second division, so as to ensure them preferential treatment in prison, are so small as to suggest

the idea that *extra* prison classification is held to be of very little account by the judicial authorities who try the cases and see the offenders. The Commissioners say :—

> It is fair to assume that when a court *does not pass a sentence of hard labour*, the element of gravity is absent from the offence, and it might be anticipated that a considerable percentage of such cases were fitting subjects for second division treatment. However, of 57,559 such cases only 2.56 per cent have been placed in the second division in 1910, a lower record than that of the previous year, when 3.64 per cent were placed in the second division.

This reluctance on the part of the courts to classify, or to prescribe differential prison treatment for the various offenders who came before them, has been much too general and persistent in character to be accounted for on any other theory than that magistrates generally were of the opinion that second-division treatment was either undesirable or unnecessary for the offenders whose cases they tried. The bench very naturally take a legal rather than a sentimental view of their duties, and in matters relating to adjudication they are for the most part silent; but there is no doubt they could give reasons for their decisions that are based on experience; and the very high rate of

recidivism which unfortunately still rules amongst minor offenders would probably give considerable support to their case. Coincidently, however, with these anomalous results of the Act of 1898, the suffragette movement, which was in full force ten years later, raised many delicate questions of classification, having regard both to the nature of the offence and the antecedents of the offender. Hundreds of respectable women literally forced their way into prison by wilfully committing slight breaches of the peace in order to draw public attention to their political grievance—that they were without votes. Situations "ludicro-terrific" and quite outside the range of official experience were at once created, which severely taxed the patience of police and magistrates, as well as the ingenuity of administrators; and mankind in general seemed to be brought to bay by a host of female resisters of the law of all ranks, ages, and conditions. To meet these difficulties for the time being the ordinary divisional classification of offenders laid down in the Act of 1898 had to be considerably modified, and the ordinary prison rules were also generously relaxed. The result of this movement has been an administrative innova-

tion which cuts across the divisional classification that had been previously established by statute. Power has now been given to the Prison Commissioners, under the direction of the Secretary of State, to mitigate—for persons whose character is good, and whose offences, however reprehensible, do not involve personal dishonour—the conditions of prison treatment which are generally regarded as of a degrading character. The change has been accomplished by means of a rule laid upon the table of the House which has already acquired statutory authority. It runs as follows:—

> In the case of any offender of the second or third division whose previous character is good, and who has been convicted of, or committed to prison for, an offence not involving dishonesty, cruelty, indecency, or serious violence, the Prison Commissioners may allow such amelioration of the conditions prescribed in the foregoing rules as the Secretary of State may approve in respect of the wearing of prison clothing, bathing, haircutting, cleaning of cells, employment, exercise, books and otherwise,—provided that no such amelioration shall be greater than that granted under the rules for offenders of the first division.

The new rule, in fact, enables the Prison Commissioners to extend to prisoners *who have been placed by the courts* in the second or third division privileges which really belong

to the first. Whether this constitutes technically a power to *alter the sentence* may be open to question; but the intention of the Act is clear, and there can be no doubt that the conditions of prison treatment, as determined by the division in which a prisoner is placed, should be left to the court which has to take everything into account in fixing the sentence. Questions relating to the particular degree of moral turpitude attaching to offences or offenders belong to the sphere of the judicial authorities, and should be determined by them only. A possible result of the new regulation is that some magistrates may be tempted to leave these delicate questions to the executive, and in this way to check that preliminary classification of offenders which is already helping so effectually to place the treatment of crime on a rational and scientific basis. The absolute exclusion of children and young persons from prison, the Borstal scheme for dealing with juvenile-adults, the segregation of inebriates, and the contemplated elimination of weak-minded persons and vagrants from the prison population, are all measures of preliminary classification essential to a satisfactory reform of our penal system. They constitute

a new sifting-out process whereby persons who have hitherto flocked to prisons in thousands will in future be excluded as being ineligible for prison treatment, and dealt with according to their needs on strictly non-penal lines. The prospects of penal reform and progress rest to a large extent on this judicial classification, which not only takes note of the nature of the offence and the antecedents of the offender, but also picks out those who never have derived, and never can derive, any benefit from prison treatment.

The classification of offenders *in* prison has quite a different aim, being directed chiefly to prevent contamination, or to promote the reclamation of those who are deemed suitable for reformatory treatment. The local prison population is so miscellaneous in kind as regards age, duration of sentence, degree of criminality, mental, physical and industrial capacity that it is not easy to fit all in their proper places. In the case of very short-term offenders classification is "vexation," for no sooner are they classified than they are gone. For those with longer sentences the Separate System, judiciously worked, used to supply a sure and ready method of classification, which had at

least the merit of shielding the tyro from the evil companionship of the expert, while it afforded the prison authorities a means of testing those who were best fitted by conduct and character for the privileges of association. But the Separate System is at present somewhat out of favour; and whatever classification of minor offenders may be adopted with a view to prevent contamination must be dependent largely for its success on efficient methods of supervision. In addition to the ordinary classes of prisoners who have to be kept strictly apart in local prisons, such as unconvicted prisoners, debtors, offenders in the first, second and third divisions, there are many other groups which have to be segregated in the interests of proper administration. Mental defectives who are unfit for ordinary penal discipline must of necessity be isolated, and placed under medical rather than disciplinary authority. First offenders must be separated from the general body, also prisoners in the Star class, and those undergoing modified Borstal treatment. Young thieves have to be parted from old receivers, prostitutes from brothel-keepers, and those who have been engaged in the commission of the same crime

from each other. Prisoners have to be classified also for purposes of work, instruction, drill and other objects, so that the difficulties of securing segregation for all these groups in a constantly changing population are considerable, and classification is in consequence a very complex business. It is probable that quite two-thirds of the inmates of local prisons are persons who are not of *really criminal* habit. To protect them from the corrupting influence of the other third is an obvious duty, but one which will be more and more difficult to carry out if the principle of association becomes universal. Prisoners may work better and behave better in association, but no supervision that has ever been invented will absolutely prevent their communicating with each other when they are associated, or contaminating each other if they feel so disposed.

Our whole penal system is at present passing through a transition stage the significance of which is hardly recognised by the public. Recent changes in the law, and changes that are imminent, mark a rate of progress greater than any that has been seen since the local prisons passed into the hands of the State. All children and young persons

have been already excluded from prisons; many first offenders are being discharged on probation and given fresh chances; Borstal Institutions for juvenile-adults of criminal habits have been successfully started; and Preventive Detention for habitual criminals is on its trial. Chronic drunkards are being secluded for special treatment; and vagrants are warned that they will have to betake themselves to labour colonies; while the world in general seems to be on the lookout for some satisfactory substitute for deprivation of liberty. When these reforms mature, and when the arrangements for extending time for the payment of fines are completed, large numbers of minor delinquents, who are now liable to imprisonment for anti-social acts which fall far short of real crime, will cease to be dumped in prisons, to the great benefit of the community, and a sensible decrease may be expected to result in the prison population. All this will be to the good. The more prisons are reserved for *criminals* the more likely are they to fulfil their proper function as places for the punishment and prevention of crime, where, too, the inmates may be trained in habits of industry and good conduct, and fitted for the duties of

useful citizenship. Time, labour, and money spent on passing hosts of petty offenders through the prison turnstiles can be diverted with much advantage to the reformation of the more serious type of criminal who is a real danger to society. The modern spirit of tolerance and leniency towards this latter person should not outrun the dictates of reason or the teachings of experience. Habituals, as we know, stand for serious crime, and cannot therefore be trifled with. They, like vagrants, are afflicted, not with a mere temporary malady, but with a "mode of life" which they have selected for themselves, and which, experience has shown, cannot be "mended while you wait." Judges who, under a chivalrous impression that it is wicked to confiscate a portion of the habitual criminal's life, pass a sentence of six months on such an offender for one crime in a series, are in reality practising a very wasteful and cruel kind of philanthropy at his expense. No lasting benefit can come to him from a sentence that *is* not penal to him, and cannot be reformatory, any more than a sentence of seven days for a confirmed drunkard is likely to cure the drink habit. What he really needs is a reformatory

sentence. In the meantime he exploits very freely the tender mercies of humanitarians, and tries to divert to himself all the benefits of that spirit of leniency which is more properly and safely extended to occasional and minor offenders. It rests with the judges who try the cases, and with the Court of Criminal Appeal which revises the sentences, to see that he does not secure an undue share of public generosity. At the present time, it must be remembered, he is the concrete expression of the worst crime in the country; and, if anything really advantageous is to be done for him by depriving him of his liberty at all, the remedy applied should bear some proportion to the nature and extent of the disease. A large proportion of the public seem to take no interest whatever in the treatment of crime, leaving it entirely in the hands of administrators. That section, however, which is most articulate, and commands in consequence most publicity, clamours for a kind of benevolence on the bench which is to be indiscriminate in application. Tribunals are naturally influenced by opinions in currency, and shape their courses accordingly. Many persons who live by, in, and for crime, and who should be

taken firmly in hand to be either reformed or restrained, are shut up in prison for a few weeks or months only, and sent out unimproved to renew their old methods of earning a living in their own way. Any daily paper will supply an example. Here is one taken at random. A man charged with stealing from the person, with a record of 23 previous convictions, is sentenced to three months' hard labour. The system may be a benevolent one in intention; but it is in practice illogical, impolitic, and inconsistent with the principles of justice to the community or of mercy to the offender.

APPENDIX

A.—ENGLAND AND WALES, 1910

DAILY AVERAGE POPULATION of CONVICT and LOCAL PRISONS compared with the GENERAL POPULATION, and showing the fluctuations at different times in the last three decades.

(It will be seen that the fall in proportion to population is very large.)

Year.	Daily average Population.		General Population.
	Convicts.	Local Prisoners.	
1880	10,299	19,835	25,708,666
1900	2,716	14,494	31,061,000
1905	3,191	18,169	32,984,028
1910	3,189	18,521	35,756,615

The lowest daily average of convicts was 2695 in 1902.
The lowest figure for local prisoners was 12,663 in 1892.

B.—ENGLAND AND WALES, 1910

Number of Prisoners convicted at Assizes and Sessions

Sentenced to penal servitude or imprisonment or detention in a Borstal Institution.	Class I.—Offences against the person—	
	(*a*) Murder (17 executed) . .	27
	(*b*) Other offences . . .	1197
	Class II.—Offences against property (with violence)	2738
	Class III.—Offences against property (without violence)	4817
	Class IV.—Malicious injuries to property	250
	Class V.—Forgery and offences against currency	266
	Class VI.—Other offences not included in above	202
	Total . . .	9497

C.—ENGLAND AND WALES, 1910

Number of Prisoners convicted summarily

Sentenced to imprisonment with or without hard labour or in default of sureties.	Indictable offences tried summarily (larceny, embezzlement, receiving, etc.)	21,381
	Other offences tried summarily:—	
	Assaults (aggravated, on police, etc.)	10,480
	Betting and gaming	754
	Brothel keeping	687
	Cruelty to animals	646
	Cruelty to, or neglect of children	1,761
	Offences against Education Acts	1,722
	,, Fishery and game	1,056
	,, Highway Acts	2,607
	,, Liquor Laws	57,418
	,, Police Regulations	12,125
	,, Poor Law	8,438
	,, Prostitution	8,856
	,, Vagrancy Acts	33,766
	Indecent exposure	970
	Malicious damage	2,897
	Offences in relation to railways	1,393
	Offences against revenue and sanitary Laws	422
	Stealing animals, fences, fruit, etc.	463
	Unlawful possession	428
	Adulteration of food and drugs	45
	Other offences	2,136
	Total	170,451

D.—RETURN showing the SENTENCES of PRISONERS committed to all LOCAL PRISONS during the Year ended 31st March 1910.

(No prisoners were received into Convict Prisons direct during the year.)

PERIOD OF SENTENCE. [Cumulative sentences are returned as equal to their united length. Concurrent sentences are returned as equal to one of them, or to the longer when they are of unequal length.]	Males.		Females.	Total.
	Committed by Ordinary Courts.	Committed by Courts-Martial.		
PENAL SERVITUDE.				
Life	7	1	4	12
29 years	...	...	...	...
25 ,,	...	...	...	...
24 ,,	...	...	...	...
23 ,,	...	...	...	...
22 ,,	...	...	...	...
21 ,,	...	...	...	...
20 ,,	1	...	...	1
19 ,,	...	...	...	...
18 ,,	...	...	...	...
17 ,,	...	...	...	...
16 ,,	...	...	...	...
15 ,,	7	...	...	7
14 ,,	2	...	...	2
13 ,,	...	...	...	...
12 ,,	2	...	...	2
11 ,,	...	...	...	...
10 ,,	19	...	3	22
9 ,,	1	...	...	1
8 ,,	5	...	...	5
7 ,,	48	...	...	48
6½ ,,	...	...	...	...
6 ,,	19	...	...	19
5½ ,,	...	...	...	...
5¼ ,,	...	...	...	...
5 ,,	217	3	5	225
4½ ,,	1	...	...	1
4 ,,	67	1	2	70
3½ ,,	11	...	...	11
3¼ ,,	...	...	...	...
3 ,,	661	2	26	689
Total	1068	7	40	1115

Period of Sentence [Cumulative sentences are returned as equal to their united length. Concurrent sentences are returned as equal to one of them, or to the longer when they are of unequal length.]	Males.		Females.	Total.
	Committed by Ordinary Courts.	Committed by Courts-Martial.		
Detention in Borstal Institution.				
3 years and over 2½ years	41	...	3	44
2½ ,, ,, 2 ,,	2	...	...	2
2 ,, ,, 18 months	63	...	3	66
18 months ,, 12 ,,	93	...	2	95
12 ,,	72	...	5	77
Total	271	...	13	284
Imprisonment.				
Over 2 years	1	...	...	1
24 months and over 23 months	86	9	1	96
23 ,, ,, 22 ,,	46	...	1	47
22 ,, ,, 21 ,,	7	...	...	7
21 ,, ,, 20 ,,	101	...	4	105
20 ,, ,, 19 ,,	34	...	1	35
19 ,, ,, 18 ,,	...	...	...	...
18 ,, ,, 17 ,,	622	3	20	645
17 ,, ,, 16 ,,	4	...	1	5
16 ,, ,, 15 ,,	9	...	2	11
15 ,, ,, 14 ,,	371	...	13	384
14 ,, ,, 13 ,,	35	...	4	39
13 ,, ,, 12 ,,	54	...	2	56
12 ,, ,, 11 ,,	1,700	19	111	1,830
11 ,, ,, 10 ,,	34	1	1	36
10 ,, ,, 9 ,,	120	...	5	125
9 ,, ,, 8 ,,	1,165	12	65	1,242
8 ,, ,, 7 ,,	243	4	27	274
7 ,, ,, 6 ,,	215	...	68	283
6 ,, ,, 5 ,,	3,028	47	409	3,484
5 ,, ,, 4 ,,	289	3	73	365
4 ,, ,, 3 ,,	1,543	36	334	1,913
3 ,, ,, 11 weeks	8,163	100	1,522	9,785
11 weeks and over 10 weeks	153	3	25	181
10 ,, ,, 9 ,,	131	6	22	159
9 ,, ,, 8 ,,	5,971	14	1,024	7,009
8 ,, ,, 7 ,,	206	32	32	270
7 ,, ,, 6 ,,	481	10	126	617
6 ,, ,, 5 ,,	2,876	41	516	3,433
5 ,, ,, 4 ,,	18,988	13	8,557	27,558

Period of Sentence. [Cumulative sentences are returned as equal to their united length. Concurrent sentences are returned as equal to one of them, or to the longer when they are of unequal length.]	Males.		Females.	Total.
	Committed by Ordinary Courts.	Committed by Courts-Martial.		
Imprisonment—(*continued*).				
4 weeks and over 3 weeks .	2,161	30	454	2,645
3 ,, ,, 2 ,, .	5,908	9	1,315	7,232
2 ,, ,, 1 week .	36,617	1	9,962	46,580
1 week	36,406	...	9,691	46,097
6 days	229	...	55	284
5 ,, ...	7,216	...	2,686	9,902
4 ,, ...	1,624	1	401	2,026
3 ,, ...	3,080	...	858	3,938
2 ,, ...	136	...	14	150
1 day	33	...	5	38
No term specified . . .	41	...	8	49
Total	140,127	394	38,415	178,936
Grand Total* . .	141,466	401	38,468	180,335

Note.—This Return includes 6 Males and 4 Females whose capital sentences were commuted to Penal Servitude.

* In addition to this number, forfeiture of licence was the only punishment in the case of 10 Males.

E.—PREVENTIVE DETENTION

DRAFT RULES proposed to be made by the SECRETARY OF STATE under the Prison Act, 1898, and the Prevention of Crime Act, 1908.

Memorandum

In laying these draft rules before Parliament in pursuance of Section 2 of the Prison Act, 1898, the Secretary of State thinks it desirable to explain briefly the object of the Rules and the nature of the sentences of preventive detention to which they relate.

The rules are made under Section 13 (2) of the Prevention of Crime Act, 1908, which directs that persons undergoing preventive detention are to be generally subject to the convict prison rules, but requires the Secretary of State by new rules to modify the conditions "in the direction of a less rigorous treatment."

The present draft Rules have been prepared by the Prison Commissioners, who have done their utmost to carry out the intention of the Statute and to make the conditions of preventive detention as easy as circumstances will allow. But it should be clearly understood that no modification of the conditions which prevail in convict prisons can alter the essential fact that preventive Detention is a form of imprisonment. Several hundred criminals of the most skilful and determined class will have to be confined for considerable periods within prison walls and to be controlled by a staff which cannot be made very numerous without undue expense. During their detention, they must always be either within locked cells or under close supervision; discipline must be firmly maintained; and hard work enforced. If there were neglect or relaxation in the supervision and discipline, it would inevitably lead to escape, or mutiny, or vice.

While, therefore, it is possible to maintain the conditions of sufficient food, adequate clothing, warmth, and shelter, which all convicts enjoy, and to allow further relaxations in the way of conversation and association, of minor luxuries, and to some extent of recreation, the essential fact remains that, after every possible mitigation has been allowed, the convict is completely deprived of his liberty and is subject to constant supervision, control, and compulsion in all that he does. Only the great need of society to be secured from professional or dangerous criminals can justify the prolongation of the ordinary sentences of penal servitude by the addition of such preventive detention.

It appears a matter of much importance that this should be clearly understood and that the idea should not grow up that preventive detention affords a pleasant and easy asylum for persons whose moral weakness or defective education has rendered them merely a nuisance to society.

The Secretary of State is satisfied that no case has been established, either from the statistics of crime or otherwise, for an increase in the general severity of the criminal code, and certainly no increase of general severity was within the intention of Lord Gladstone in proposing, or the House of Commons in passing, the Prevention of Crime Act. On the contrary, it was intended to introduce such mitigation into the conditions of convict life as would allow the longer detention of those persons only who are professional criminals engaged in the more serious forms of crime. This is indicated in the Act by the fact that preventive detention cannot be imposed except for a crime of such a character that it has justified the passing of a sentence of penal servitude. It was, moreover, repeatedly stated by Lord Gladstone in the course of the debates that the Bill was devised for "the advanced dangerous criminal," for "the persistent dangerous criminal," for "the most hardened criminals": its object was "to give the State effective control over dangerous offenders": it was not to be applied to persons who were "a nuisance rather than a danger to society," or to the "much larger

class of those who were partly vagrants, partly criminals, and who were to a large extent mentally deficient." On the 12th June 1908, he explained to the House of Commons that the intention was to deal not with mere habituals but with professionals: "For 60 per cent the present system was sufficiently deterrent, but for the professional class it was inadequate. There was a distinction well known to criminologists between habituals and professionals. Habituals were men who drop into crime from their surroundings or physical disability, or mental deficiency, rather than from any active intention to plunder their fellow creatures or from being criminals for the sake of crime. The professionals were the men with an object, sound in mind—so far as a criminal could be sound in mind—and in body, competent, often highly skilled, and who deliberately, with their eyes open, preferred a life of crime, and knew all the tricks and turns and manœuvres necessary for that life. It was with that class that the Bill would deal."

Although, therefore, the term "habitual" is used, it is clear that not all habituals but only the professional class is aimed at by the Act, which not only restricts the use of preventive detention to those already found deserving of three years' penal servitude, but provides many safeguards against the too easy use of the new form of punishment.

It appears specially desirable that this should be impressed on the police authorities who have to take the initiative in the proceedings which result in the criminal's being dealt with under the Act. After the passing of the Act a circular was issued by Lord Gladstone, in which he endeavoured to explain its object and to indicate the limitations within which it would be applied. But it has proved a matter of much difficulty to secure uniform action among 180 different police authorities throughout the country, not all equally versed in the settlement of questions of this grave character. On the one hand, a large number of cases have been presented to the Director of Public Prosecutions which he has felt bound to reject, and on the other it appears from an examination of the records of convicted prisoners that many, fully qualified within the

statutory definition of "habitual criminal," have not been presented at all.

The Secretary of State proposes therefore to issue further instructions to the police to guide them in the selection of cases for presentation, and thus to mitigate the inequalities which are likely to arise when the first stage of the procedure rests with so many different authorities. He proposes that the police should not, save for special reasons which they must fully state, submit any case to the Director of Public Prosecutions, unless, in addition to the qualifications expressly required by the Act, the criminal (*a*) is over thirty years old, (*b*) has already undergone a term of penal servitude, and (*c*) is charged anew with a substantial and serious offence.

On the other hand, in order that the range of choice open to the Director of Public Prosecutions may be extended, the police will also be enjoined to consider carefully, with a view to submission to the Director, the case of every person who is qualified under the Act and also comes within these rules.

The point of most importance, and also of most difficulty, is to restrict the selection to cases where the last offence is in itself substantial and serious. On the one hand, mere pilfering, unaccompanied by any serious aggravation, can never justify proceedings under the Act. The amount stolen or embezzled is of course no certain measure of the criminal's guilt; but where the amount is small and there is no violence or treachery, public feeling is shocked, and more harm than good is done, by the imposition of a long term of detention. On the other hand, violence conjoined with other crimes, skill in crime, the use of high-class implements of crime, and the possession of fire-arms or other lethal weapons, will always count as important adverse factors. The general test should be—is the nature of the crime such as to indicate that the offender is not merely a nuisance but a serious danger to society? In deciding on this point, the police will always be able to count on the assistance and guidance of the Director of Public Prosecutions to whom they

present the cases for indictment under the Act, and who is able to bring to bear on them an experience far wider than that of any police authority. While it is impossible for him, as it is for the police, to say beforehand what crimes would, in the opinion of the judge who may try them, qualify for penal servitude, he will be able to take a general survey of all the cases coming within the scope of the Act, and to exclude from indictment under it those cases where the crime charged is not in his opinion of sufficient gravity.

It will further be important that the police should obtain information not only (as required by statute) regarding the convict's mode of life since his last discharge from prison, but also regarding his whole previous career. It is known that some convicts have obtained nominal employment after discharge, not in good faith, but in the hope that they will thereby on their next conviction be excluded from indictment as habitual criminals: and a general survey of the convict's life and conduct is therefore necessary.

The Secretary of State trusts that when these views are understood by the police authorities of the country, the presentations under the Act will proceed on more uniform and restricted lines than hitherto, and will at the same time cover more accurately the area of professional crime. As time passes and experience of the new system accumulates, it may be possible to lay down more definite rules and to perfect the principles of selection. It will also, he hopes, be possible to form a better idea of the amount of punishment involved in a sentence of preventive detention, and possibly to introduce new mitigations in its conditions. In any event, however, the Act must not be resorted to as an easy and painless solution of the difficult problem of habitual crime, but must rather be regarded as an exceptional means of protecting society from the worst class of professional criminals.

HOME OFFICE,
16*th February* 1911.

Draft Rules for Preventive Detention

(1) Persons undergoing preventive detention shall be divided into three grades, ordinary, special, and disciplinary. On entering upon preventive detention, they shall be placed in the ordinary grade.

(2) After every six months passed in the ordinary grade with exemplary conduct a prisoner who has shown zeal and industry in the work assigned to him may be awarded a certificate of industry and conduct. Four of these certificates will entitle him to promotion to the special grade. With each certificate a prisoner will receive a good conduct stripe carrying privileges or a small money payment.

(3) A prisoner may be placed in the disciplinary grade by order of the Governor as part of a punishment for misconduct, or because he is known to be exercising a bad influence on others, and may be kept there as long as may be necessary in the interests of himself and of others. While in the disciplinary grade he may be employed in association if his conduct justifies association, but he will not be associated with others except at labour.

(4) Prisoners will be employed either at useful trades in which they will be instructed, or at agricultural work, or in the service of the prison, and those in the ordinary and special grades will be allowed to earn gratuity by their work. They will be allowed to spend a portion of their gratuity in the purchase of additions to their dietary, or to send it to their families, or to accumulate it for use on their discharge.

(5) A prisoner who is in hospital, or medically unfit for full work will, on the recommendation of the medical officer who will certify that the disability was genuine and not caused by the prisoner's own fault, be credited with gratuity in proportion to his earnings when in health or calculated on his general disposition to work, coupled with good conduct.

(6) A canteen will be opened in the prison at which prisoners in the ordinary and special grades may purchase

articles of food, and other small articles at prices to be fixed by the Directors. The cost of such articles will be charged against each prisoner's gratuity. The privilege of purchasing articles in the canteen may at any time be limited or withdrawn by the Governor.

(7) Prisoners who have obtained three certificates of industry will be eligible to have a garden allotment assigned to them which they may cultivate at such times as may be prescribed. The produce of these allotments will, if possible, be purchased for use in prisons at market rates, and the proceeds credited to the prisoner.

(8) Prisoners in the ordinary grade may be allowed to associate at meal times and also, after gaining the second certificate, in the evenings. Prisoners in the special grade may also be allowed to associate at meal times and in the evenings, and shall be allowed such additional relaxations of a literary and social character as may be prescribed from time to time.

(9) Any of the privileges prescribed in these special rules, or gratuity earned, may be forfeited for misconduct. A prisoner has no legal claim upon his gratuity, which will be expended for his benefit, or may be withheld at the discretion of the Society or person under whose supervision he is placed.

(10) It will be the duty of the Chaplain and Prison Minister to see each prisoner individually from time to time during his detention and to promote the reformation of those under their spiritual charge. Divine service will be held weekly in the prison, and there will be in addition such mission services, lectures, and addresses on religious, moral, and secular subjects as may be arranged.

(11) Prisoners shall receive the diets which the Directors may prescribe from time to time.

(12) Prisoners will be allowed to write and receive a visit at fixed intervals according to their grade.

(13) The Board of Visitors appointed by the Secretary of State under Section 13 (4) of the Prevention of Crime Act, 1908, shall hold office for three years. Their powers shall not be affected by vacancies. The Secretary of

State shall, as soon as possible, fill any vacancy by making a new appointment. At their first meeting they shall appoint a chairman. One or more of them shall visit the prison once a month, and they shall meet as a Board as often as possible. They shall hear and adjudicate on such offences on the part of prisoners as may be referred to them by the Directors, and they shall investigate any complaint which a prisoner may desire to make to them, and, if necessary, report the same to the Directors with their opinion. They shall have free access to every part of the prison and may see any prisoner in private, inspect the diets, and examine any of the books. They shall bring any abuses to the immediate notice of the Directors, and in cases of urgency they may make recommendations in writing which the Governor shall carry out pending the decision of the Directors. They shall keep minutes of their proceedings, and make an annual report to the Secretary of State at the beginning of each year.

(14) The Committee appointed under Section 14 (4) of the said Act shall meet once a quarter, and shall forward to the Directors such reports as may be required for their assistance in advising the Secretary of State as to the prospects and probable behaviour of prisoners after discharge.

(15) Any person whose licence has been revoked or forfeited may on his return to prison be placed and kept in the disciplinary grade for such length of time as the Board of Visitors shall think necessary.

(16) These rules shall come into force on the 1st day of May 1911.

F.—PREVENTION OF CRIME ACT, 1908

[8 EDW. VII., CH. 59.]

CHAPTER 59

AN Act to make better provision for the prevention of crime, and for that purpose to provide for the reformation of young offenders and the prolonged detention of habitual criminals, and for other purposes incidental thereto. [21st December 1908.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

REFORMATION OF YOUNG OFFENDERS

1.—(1) Where a person is convicted on indictment of an offence for which he is liable to be sentenced to penal servitude or imprisonment, and it appears to the court—

(*a*) that the person is not less than sixteen nor more than twenty-one years of age; and

(*b*) that, by reason of his criminal habits or tendencies, or association with persons of bad character, it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime;

it shall be lawful for the court, in lieu of passing a sentence of penal servitude or imprisonment, to pass a sentence of

detention under penal discipline in a Borstal Institution for a term of not less than one year nor more than three years:

Provided that, before passing such a sentence, the court shall consider any report or representations which may be made to it by or on behalf of the Prison Commissioners as to the suitability of the case for treatment in a Borstal Institution, and shall be satisfied that the character, state of health, and mental condition of the offender, and the other circumstances of the case, are such that the offender is likely to profit by such instruction and discipline as aforesaid.

(2) The Secretary of State may by order direct that this section shall extend to persons apparently under such age not exceeding the age of twenty-three as may be specified in the order, and upon such an order being made this section shall, whilst the order is in force, have effect as if the specified age were substituted for "twenty-one":

Provided that such an order shall not be made until a draft thereof has lain before each House of Parliament for not less than thirty days during the session of Parliament, and if either House, before the expiration of that period, presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of any new draft order.

2.—Where a youthful offender sentenced to detention in a reformatory school is convicted under any Act before a court of summary jurisdiction of the offence of committing a breach of the rules of the school, or of inciting to such a breach, or of escaping from such a school, and the court might under that Act sentence the offender to imprisonment, the court may, in lieu of sentencing him to imprisonment, sentence him to detention in a Borstal Institution for a term not less than one

year nor more than three years, and in such case the sentence shall supersede the sentence of detention in a reformatory school.

3.—The Secretary of State may, if satisfied that a person undergoing penal servitude or imprisoned in consequence of a sentence passed either before or after the passing of this Act, being within the limits of age within which persons may be detained in a Borstal Institution, might with advantage be detained in a Borstal Institution, authorise the Prison Commissioners to transfer him from prison to a Borstal Institution, there to serve the whole or any part of the unexpired residue of his sentence, and whilst detained in, or placed out on licence from, such an institution, this Part of this Act shall apply to him as if he had been originally sentenced to detention in a Borstal Institution.

4.—(1) For the purposes of this Part of this Act the Secretary of State may establish Borstal Institutions, that is to say, places in which young offenders whilst detained may be given such industrial training and other instruction, and be subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime, and for that purpose may, with the approval of the Treasury, authorise the Prison Commissioners either to acquire any land or to erect or acquire any building or to appropriate the whole or any part of any land or building vested in them or under their control, and any expenses incurred under this section shall be paid out of moneys provided by Parliament.

(2) The Secretary of State may make regulations for the rule and management of any Borstal Institution, and the constitution of a visiting committee thereof, and for the classification, treatment, and employment and control of persons sent to it in pursuance of this Part of this Act, and for their temporary detention until arrangements can be made for sending them to the institution, and, subject to any adaptations, alterations, and exceptions made by

such regulations, the Prison Acts, 1865 to 1898 (including the penal provisions thereof) and the rules thereunder, shall apply in the case of every such institution as if it were a prison.

5.—(1) Subject to regulations by the Secretary of State, the Prison Commissioners may at any time after the expiration of six months, or, in the case of a female, three months, from the commencement of the term of detention, if satisfied that there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life, by licence permit him to be discharged from the Borstal Institution on condition that he be placed under the supervision or authority of any society or person named in the licence who may be willing to take charge of the case.

(2) A licence under this section shall be in force until the term for which the offender was sentenced to detention has expired, unless sooner revoked or forfeited.

(3) Subject to regulations by the Secretary of State, a licence under this section may be revoked at any time by the Prison Commissioners, and where a licence has been revoked the person to whom the licence related shall return to the Borstal Institution, and, if he fails to do so, may be apprehended without a warrant and taken to the institution.

(4) If a person absent from a Borstal Institution under such a licence escapes from the supervision of the society or person in whose charge he is placed, or commits any breach of the conditions contained in the licence, he shall be considered thereby to have forfeited the licence.

(5) A court of summary jurisdiction for the place where the Borstal Institution from which a person has been placed out on licence is situate, or where such a person is found, may, on information on oath that the licence has been forfeited under this section, issue a warrant for his apprehension, and he shall, on apprehension, be brought

before a court of summary jurisdiction, which, if satisfied that the licence has been forfeited, may order him to be remitted to the Borstal Institution, and may commit him to any prison within the jurisdiction of the court until he can conveniently be removed to the institution.

(6) The time during which a person is absent from a Borstal Institution under such a licence shall be treated as part of the time of his detention in the institution: Provided that where that person has failed to return to the institution on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the institution.

(7) A licence under this section shall be in such form and shall contain such conditions as may be prescribed by regulations made by the Secretary of State.

6.—(1) Every person sentenced to detention in a Borstal Institution shall, on the expiration of the term of his sentence, remain for a further period of six months under the supervision of the Prison Commissioners.

(2) The Prison Commissioners may grant to any person under their supervision a licence in accordance with the last foregoing section, and may revoke any such licence and recall the person to a Borstal Institution, and any person so recalled may be detained in a Borstal Institution for a period not exceeding three months, and may at any time be again placed out on licence:

Provided that a person shall not be so recalled unless the Prison Commissioners are of opinion that the recall is necessary for his protection, and they shall again place him out on licence as soon as possible and at latest within three months after the recall, and that a person so recalled, shall not in any case be detained after the expiration of the said period of six months' supervision.

(3) A licence granted to a person before the expiration of his sentence of detention in a Borstal Institution shall,

on his becoming liable to be under supervision in accordance with this section, continue in force after the expiration of that term, and may be revoked in manner provided by the last foregoing section.

(4) The Secretary of State may at any time order that a person under supervision under this section shall cease to be under such supervision.

7.—Where a person detained in a Borstal Institution is reported to the Secretary of State by the visiting committee of such institution to be incorrigible, or to be exercising a bad influence on the other inmates of the institution, the Secretary of State may commute the unexpired residue of the term of detention to such term of imprisonment, with or without hard labour, as the Secretary of State may determine, but in no case exceeding such unexpired residue.

8.—Where a society has undertaken the duty of assisting or supervising persons discharged from a Borstal Institution, either absolutely or on licence, there may be paid to the society out of money provided by Parliament towards the expenses of the society incurred in connection with the persons so discharged such sums on such conditions as the Secretary of State, with the approval of the Treasury, may recommend.

9.—Where a person has been sentenced to detention in a Borstal Institution in one part of the United Kingdom, the Secretary of State, the Secretary for Scotland, or the Lord Lieutenant of Ireland, as the case may be, may, as authority under this Act for that part of the United Kingdom, direct that person to be removed to and detained in a Borstal Institution in another part of the United Kingdom, with the consent of the authority under this Act for that other part.

Part II

Detention of Habitual Criminals

10.—(1) Where a person is convicted on indictment of a crime, committed after the passing of this Act, and subsequently the offender admits that he is, or is found by the jury to be, a habitual criminal, and the court passes a sentence of penal servitude, the court, if of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that the offender should be kept in detention for a lengthened period of years, may pass a further sentence ordering that on the determination of the sentence of penal servitude he be detained for such period not exceeding ten nor less than five years, as the court may determine, and such detention is hereinafter referred to as preventive detention, and a person on whom such a sentence is passed shall, whilst undergoing both the sentence of penal servitude and the sentence of preventive detention, be deemed for the purposes of the Forfeiture Act, 1870, and for all other purposes, to be a person convicted of felony.

(2) A person shall not be found to be a habitual criminal unless the jury finds on evidence—

(*a*) that since attaining the age of sixteen years he has at least three times previously to the conviction of the crime charged in the said indictment been convicted of a crime, whether any such previous conviction was before or after the passing of this Act, and that he is leading persistently a dishonest or criminal life; or

(*b*) that he has on such a previous conviction been found to be a habitual criminal and sentenced to preventive detention.

(3) In any indictment under this section it shall be sufficient, after charging the crime, to state that the offender is a habitual criminal.

(4) In the proceedings on the indictment the offender shall in the first instance be arraigned on so much only of the indictment as charges the crime, and if on arraignment he pleads guilty or is found guilty by the jury, the jury shall, unless he pleads guilty to being a habitual criminal, be charged to inquire whether he is a habitual criminal, and in that case it shall not be necessary to swear the jury again:

Provided that a charge of being a habitual criminal shall not be inserted in an indictment—

(*a*) without the consent of the Director of Public Prosecutions; and

(*b*) unless not less than seven days' notice has been given to the proper officer of the court by which the offender is to be tried, and to the offender, that it is intended to insert such a charge;

and the notice to the offender shall specify the previous convictions and the other grounds upon which it is intended to found the charge.

(5) Without prejudice to any right of the accused to tender evidence as to his character and repute, evidence of character and repute may, if the court thinks fit, be admitted as evidence on the question whether the accused is or is not leading persistently a dishonest or criminal life.

(6) For the purposes of this section the expression "crime" has the same meaning as in the Prevention of Crimes Act, 1871, and the definition of "crime" in that Act, set out in the schedule to this Act, shall apply accordingly.

11.—A person sentenced to preventive detention may, notwithstanding anything in the Criminal Appeal Act, 1907, appeal against the sentence without the leave of the Court of Criminal Appeal.

12.—Where a person has been sentenced, whether before or after the passing of this Act, to penal servitude for a

term of five years or upwards, and he appears to the Secretary of State to have been a habitual criminal within the meaning of this Act, the Secretary of State may, if he thinks fit, at any time after three years of the term of penal servitude have expired, commute the whole or any part of the residue of the sentence to a sentence of preventive detention, so, however, that the total term of the sentence when so commuted shall not exceed the term of penal servitude originally awarded.

13.—(1) The sentence of preventive detention shall take effect immediately on the determination of the sentence of penal servitude, whether that sentence is determined by effluxion of time or by order of the Secretary of State at such earlier date as the Secretary of State, having regard to the circumstances of the case and in particular to the time at which the convict, if sentenced to penal servitude alone, would ordinarily have been licensed to be at large, may direct.

(2) Persons undergoing preventive detention shall be confined in any prison or part of a prison which the Secretary of State may set apart for the purpose, and shall (save as otherwise provided by this Act) be subject to the law for the time being in force with respect to penal servitude as if they were undergoing penal servitude:

Provided that the rules applicable to convicts and convict prisons shall apply to persons undergoing preventive detention, and to the prisons or parts of prisons in which they are detained, subject to such modifications in the direction of a less rigorous treatment as the Secretary of State may prescribe by prison rules within the meaning of the Prison Act, 1898.

(3) Persons undergoing preventive detention shall be subjected to such disciplinary and reformative influences, and shall be employed on such work as may be best fitted to make them able and willing to earn an honest livelihood on discharge.

(4) The Secretary of State shall appoint for every such prison or part of a prison so set apart a board of visitors, of whom not less than two shall be justices of the peace, with such powers and duties as he may prescribe by such prison rules as aforesaid.

14.—(1) The Secretary of State shall, once at least in every three years during which a person is detained in custody under a sentence of preventive detention, take into consideration the condition, history and circumstances of that person with a view to determining whether he shall be placed out on licence, and, if so, on what conditions.

(2) The Secretary of State may at any time discharge on licence a person undergoing preventive detention if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life, or that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him from confinement in prison.

(3) A person so discharged on licence may be discharged on probation, and on condition that he be placed under the supervision or authority of any society or person named in the licence who may be willing to take charge of the case, or on such other conditions as may be specified in the licence.

(4) The Directors of Convict Prisons shall report periodically to the Secretary of State on the conduct and industry of persons undergoing preventive detention, and their prospects and probable behaviour on release, and for this purpose shall be assisted by a committee at each prison in which such persons are detained, consisting of such members of the board of visitors and such other persons of either sex as the Secretary of State may from time to time appoint.

(5) Every such committee shall hold meetings, at such intervals of not more than six months as may be prescribed, for the purpose of personally interviewing persons undergo-

ing preventive detention in the prison and preparing reports embodying such information respecting them as may be necessary for the assistance of the Directors, and may at any other times hold such other meetings, and make such special reports respecting particular cases, as they may think necessary.

(6) A licence under this section may be in such form and may contain such conditions as may be prescribed by the Secretary of State.

(7) The provisions relating to licences to be at large granted to persons undergoing penal servitude shall not apply to persons undergoing preventive detention.

15.—(1) The society or person under whose supervision or authority a person is so placed shall periodically, in accordance with regulations made by the Secretary of State, report to the Secretary of State on the conduct and circumstances of that person.

(2) A licence under this Part of this Act may be revoked at any time by the Secretary of State, and where a licence has been revoked, the person to whom the licence related shall return to the prison, and, if he fails to do so, may be apprehended without warrant and taken to prison.

(3) If a person absent from prison under such a licence escapes from the supervision of the society or person in whose charge he is placed, or commits any breach of the conditions contained in the licence, he shall be considered thereby to have forfeited the licence, and shall be taken back to prison.

(4) A court of summary jurisdiction for the place where the prison from which a person has been discharged on licence is situate, or where such a person is found, may, on information on oath that the licence has been forfeited under this section, issue a warrant for his apprehension, and he shall, on apprehension, be brought before a court of summary jurisdiction, which, if satisfied that the licence

has been forfeited, shall order him to be remitted to preventive detention, and may commit him to any prison within the jurisdiction of the court until he can conveniently be removed to a prison or part of a prison set apart for the purpose of the confinement of persons undergoing preventive detention.

(5) The time during which a person is absent from prison under such a licence shall be treated as part of the term of preventive detention:

Provided that, where such person has failed to return on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the unexpired residue of the term of preventive detention.

16.—Without prejudice to any other powers of discharge, the Secretary of State may at any time discharge absolutely any person discharged conditionally on licence under this Part of this Act, and shall so discharge him at the expiration of five years from the time when he was first discharged on licence if satisfied that he has been observing the conditions of his licence and abstaining from crime.

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